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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 127 (PAE)

5 LUCIO CELLI,

6 Defendant.

7 -----x
8 New York, N.Y.
9 April 6, 2020
2:05 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge
13 Sitting By Designation

14 APPEARANCES

15 MARK J. LESKO,

16 United States Attorney for the
Eastern District of New York

17 ANNA KARMIGIOS

NADIA SHIHATA

18 Assistant United States Attorneys

19 BENJAMIN SILVERMAN

20 Attorney for Defendant
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1 (Case called)

2 MS. KARMIGIOS: Anna Karmigios and Nadia Shihata, for
3 the government. Good afternoon, your Honor.

4 THE COURT: Good afternoon, Ms. Karmigios.

5 And good afternoon, Ms. Shihata.

6 MS. SHIHATA: Good afternoon.

7 MR. SILVERMAN: Good afternoon, your Honor. Benjamin
8 Silverman, and seated to my left is Lucio Celli, and I believe
9 on the phone is Dorea Silverman.

10 THE DEFENDANT: Good afternoon, your Honor.

11 THE COURT: Very good. Good afternoon, Mr. Silverman.

12 Good afternoon, Mr. Celli.

13 Good afternoon, by phone, to Ms. Silverman.

14 And good afternoon to anyone else who is auditing the
15 conference by phone.

16 Good afternoon, as well, to Mr. Walker, our court
17 reporter.

18 Let me begin just by acknowledging the obvious, which
19 is that we're here under the strange situation of COVID
20 conditions, and I appreciate -- first of all, I hope everyone
21 is doing well from a health perspective; second of all, I
22 appreciate the awkwardness of our being in masks. For just a
23 quick second, I'm going to take down the mask because I think
24 Mr. Celli is entitled to see the face of the judge who is --

25 THE DEFENDANT: I saw you, your Honor. Sorry.

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1 THE COURT: I'm just being gracious, sir. I just
2 wanted you to have an opportunity to see me, so that the face
3 of justice is not masked for the entirety of this proceeding.
4 I won't speak while I have the mask down.

5 (Pause)

6 THE COURT: And I understand that Mr. Smallman has
7 asked everybody, please, not to stand when you speak, so I'll
8 ask you to abide by that request in the interests of public
9 safety.

10 I have a handful of matters to take up. The very
11 first one is just to put on the record the fact of everybody's
12 consent to doing today's proceeding here in the Southern
13 District, for which I am appreciative as well to everyone.

14 Mr. Silverman, I've got your email of March 31, at
15 3:05, saying that you consent to proceeding here today. Just
16 to confirm on the record that you do?

17 MR. SILVERMAN: Yes, your Honor. Thank you.

18 THE COURT: Very good.

19 And, Ms. Karmigios, I have your email of March 30th to
20 the same effect. I take it, just to confirm, the government,
21 as well, consents to doing this here today?

22 MS. KARMIGIOS: Yes, your Honor.

23 THE COURT: All right. Very good.

24 The two principal areas of business for today are my
25 resolution of the pending motions in limine and then what's

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1 called a *Faretta* inquiry, or an inquiry to Mr. Celli, presented
2 by the fact that, according to Mr. Silverman, Mr. Celli is
3 interested in or is exploring representing himself at trial.
4 And I'll take those in that order.

5 In connection with the motions in limine, I have a
6 handful of factual questions for counsel that may shape the
7 resolution or discussion of a couple of the motions.

8 Before I do that, though, there's just one issue that
9 I wanted to take up, and it is prompted by a statement that was
10 made, Mr. Silverman, by you in your email to counsel and the
11 Court of March the 29th, and this was in connection with
12 scheduling a conference for the purpose of exploring
13 Mr. Celli's interest in representing himself, and you write, "I
14 note that Mr. Celli states that he intends to call me as a
15 witness at trial, so it may be necessary for the Court to
16 appoint new counsel as a standby attorney."

17 Putting aside any other issue involving Mr. Celli's
18 request to represent himself, I just wanted to briefly break
19 off the piece that says that you may be a trial witness.

20 MR. SILVERMAN: I understand, your Honor.

21 THE COURT: May I ask you if you have an understanding
22 as to what subject you are competent to testify about that
23 could be litigated at this trial?

24 MR. SILVERMAN: In my view, there is no subject that I
25 have relevant testimony to provide. This is getting to one of

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1 the issues as to why Mr. Celli would like new counsel. We have
2 different views, or Mr. Celli has had different views, with his
3 various counsel about what's relevant and should be offered at
4 trial.

5 As a pure legal matter, I don't think I have relevant
6 trial evidence to offer.

7 THE COURT: I mean, I take it you did not meet
8 Mr. Celli until more than a year -- much more than a year after
9 the events at issue?

10 MR. SILVERMAN: I first met Mr. Celli in October of
11 last year. I never had any contact with him before I was
12 appointed on October 16th, 2020.

13 THE COURT: All right. Look, the reason I'm asking is
14 that if, in fact, you were a bona fide fact witness, there
15 would be a whole other set of issues to deal with. If there is
16 not a credible theory under which you would be eligible to be a
17 trial witness, I'd like to remove that as a portion of the
18 discussion.

19 Mr. Silverman, let me ask you, when I take up with
20 your client whether there's a concrete basis on which to
21 believe you're qualified to serve as a trial witness, it's just
22 to tie up that loose end? Shall I take that up with your
23 client?

24 MR. SILVERMAN: Your Honor, can I ask permission to
25 move over to Mr. Celli and to make it quicker than the phone?

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1 THE DEFENDANT: Oh, whatever.

2 MR. SILVERMAN: I can use the phone as well.

3 THE COURT: It's a matter of your comfort together,
4 and I don't want to probe about vaccination, but if there's any
5 discomfort either of you have, you should be using those
6 phones.

7 MR. SILVERMAN: I appreciate that. I'm comfortable
8 moving to my client very quickly, if that's okay with the
9 Court.

10 THE COURT: Mr. Celli, are you comfortable with that,
11 too?

12 Go ahead. Okay.

13 (Pause)

14 MR. SILVERMAN: Your Honor, Mr. Celli would like to
15 address the Court on this topic.

16 THE COURT: Sure.

17 Mr. Celli, let me just explain to you why I'm raising
18 this question. If Mr. Silverman were, in fact, qualified to be
19 a trial witness, if, for example, he was a fact witness who was
20 an eyewitness to some of the events that may be at issue or
21 something like that, that would present a whole different
22 challenge and a different issue with respect to his
23 representation. I was unaware of any basis on which he could
24 so serve, and Mr. Silverman appears to be similarly unaware of
25 such a basis, but since that representation is ultimately or

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1 that interest is coming from you, I didn't want to skip that
2 subject without giving you a chance to speak. I will ask you,
3 though, just to -- a couple of things. Just keep your remarks
4 to just that subject -- there's plenty of other ground to
5 cover -- and particularly because of the masking, speak slowly
6 and distinctly, so the court reporter can take down --

7 THE DEFENDANT: Sure.

8 THE COURT: -- what you say.

9 THE DEFENDANT: So the reason, and it's not only
10 Mr. Silverman, it's all the prior lawyers as well, there is
11 evidence that was not presented at bail. So I have asked other
12 people in the DOJ outside the Second Circuit. They even see
13 it, what was done to me, as wrong. I was deprived of all
14 procedural due process. Everybody except Mr. Silverman told me
15 about -- the U.S. Marshals told me I wasn't in danger, and
16 there's a report, supposedly -- I never seen it yet -- but,
17 according to Mr. Silverman, there is a report. So that should
18 have been presented at bail, and because of what happened at
19 bail, I'm being denied retro money, which is also a term of
20 retaliation for my exposure of Judge Cogan, who worked for the
21 UFT for over 20 years.

22 THE COURT: Okay.

23 THE DEFENDANT: So that's the issue.

24 THE COURT: Thank you. Look, I appreciate you
25 clarifying your thinking.

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1 I do have to say, though, that the issue at trial will
2 not be about what happened at bail or anything like that. The
3 issue at trial is simply going to be framed by the charge
4 brought against you, whether you did or didn't, within the
5 elements of Section 875(c) of Title 18, commit that offense.
6 And so, whatever else happened in the history of the case after
7 you were charged, none of that speaks to whether or not you're
8 guilty or not guilty of that offense. So, whatever issues you
9 have with respect to any of the lawyers who've represented you,
10 none of them is what we call a fact witness, none of them is
11 qualified to speak to the ultimate issues -- you know, was there
12 a threat, was it in interstate commerce, was it to injure the
13 person of another -- that sort of thing, what was your intent
14 at the time. Those are the issues on which --

15 THE DEFENDANT: That's the other --

16 THE COURT: Sorry, Mr. Celli.

17 THE DEFENDANT: Sorry.

18 THE COURT: It's very important, particularly because
19 we have a court reporter, always let me finish, as I will let
20 you finish.

21 THE DEFENDANT: I apologize.

22 THE COURT: No worries.

23 So, with respect, I appreciate that you may have
24 misgivings about some of the people who have represented you.
25 I'm not in any way crediting that as a valid misgiving, but you

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1 may have those, but that's a separate issue from whether
2 Mr. Silverman or any of those people, if they were still by
3 your side, would be a trial witness at trial. There's really
4 no basis that I've heard under which Mr. Silverman could be
5 sitting here or its equivalent in the Eastern District during
6 your trial.

7 THE DEFENDANT: They saw that Judge Cogan fixed my --
8 not only did he fix my state case, he fixed my bail hearing.

9 THE COURT: Let me ask you, Mr. Celli --

10 THE DEFENDANT: Yes.

11 THE COURT: -- are you saying Mr. Silverman saw Judge
12 Cogan fix the hearing?

13 THE DEFENDANT: No, but I have U.S. Marshals said that
14 they would fix my state case, and you know that under Federal
15 Rules of discovery -- Federal Rules of Evidence, opposing
16 statements are admissible, and those were the statements said
17 by the U.S. Marshals.

18 THE COURT: All right. Mr. Celli, putting aside what
19 the rules might be as to statements by the marshal -- I'm trying
20 to keep focused here -- the only reason I've raised this subject
21 is because there was a suggestion that Mr. Silverman might be
22 legally unqualified to represent you at trial because he would
23 be wearing a separate hat as a fact witness.

24 THE DEFENDANT: Okay.

25 THE COURT: Putting aside what evidence may be

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1 received, Mr. Silverman had nothing to do with any of those
2 events. He entered this case at my appointment less than a
3 year ago, or about a year ago -- or less than a year ago, so he
4 is -- well less than a year ago. So, with respect, I want to
5 move on to other business, but the only issue here is, is there
6 some proposition at trial that Mr. Silverman is a firsthand
7 witness to that he can testify?

8 THE DEFENDANT: Yeah, because they're telling me what
9 my intent was. Only I can say what my intent was.

10 THE COURT: Well, the point is --

11 THE DEFENDANT: And that's missing from the briefs.
12 So I don't know how you're going to render a decision today
13 when there are issues that I need to fix.

14 THE COURT: Okay. As I said, the only issue that I've
15 raised with you right now involves Mr. Silverman. And from the
16 discussion I've had, my instinct is, I think, confirmed that
17 Mr. Silverman is not a fact witness; he had nothing to do with,
18 and was not present on the scene of, any of the events at
19 issue.

20 The next issue I want to take up involves the motions
21 in limine. And I have several just discrete questions, and I'm
22 going to begin by putting a couple to the government.

23 With respect to the postarrest statement that
24 Mr. Celli gave on November 14th, you have identified subsets of
25 that statement, the yellow highlights, that you intend to

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1 admit. I noted at the beginning that you do not intend to
2 elicit the Miranda warnings. Would it be your intention,
3 during the examination of the witness, to bring out the fact
4 that there had been a Miranda warning?

5 MS. KARMIGIOS: Yes, your Honor, we would elicit that
6 there had been a Miranda warning.

7 Yes, your Honor, we do intend to elicit that there had
8 been a Miranda warning and a waiver of his Miranda rights.

9 THE COURT: The next question is: An issue has arisen
10 about whether to play the audio alone or the video, and the
11 concern that was raised by the defense, in part, was that
12 Mr. Celli is handcuffed. One of the issues is what a jury
13 might or might not infer from seeing the handcuffing.

14 Is it your intention, in order to minimize any
15 potential prejudice that could flow from the video showing the
16 handcuffing, to contextualize that briefly for the jury? For
17 example, I am aware, in other settings, that in certain
18 situations, handcuffing somebody in a cellblock is literally a
19 matter of ordinary procedure, it doesn't reflect an
20 individualized judgment about them; it's if you're in the
21 cellblock, you're handcuffed. And the question is: Is there
22 evidence of that nature that can and would be elicited here to
23 give the jury a neutral explanation that does not focus on
24 anything specific to Mr. Celli for why the handcuffing is
25 occurring?

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1 MS. KARMIGIOS: Your Honor, I do believe that the
2 witness will testify about the postarrest statement, would
3 testify to the fact that the handcuffs were part of a routine
4 procedure. That's my current understanding. I'd also add that
5 the government does intend to play the video. We think it's
6 probative of Mr. Celli's demeanor, and we also think based --

7 THE COURT: Sorry, sorry, I'm not asking for legal
8 argument, because I read the briefs, I'm prepared to rule, but
9 the missing ingredient for me was whether there would be any
10 evidence that explains to the jury what the handcuffing does.
11 I understand your reasons for believing the video is more
12 probative, and more useful, and clearer than the audio -- I
13 fully get that -- but on the other side of the equation, I have
14 to consider how the jury would react to seeing the handcuffs.
15 And one question is: Are they going to be given some context,
16 so that the jury understands that the handcuffing is a matter
17 of routine in that space and not some judgment about Mr. Celli?

18 MS. KARMIGIOS: Yes, your Honor. With the caveat that
19 witness prep is ongoing, and it's still in its early stages, it
20 is my current understanding that the witness would testify that
21 this was a routine procedure.

22 THE COURT: All right. Okay.

23 The next question is for you, Mr. Silverman. On
24 page 8 of the transcript of the prison calls, there is a
25 disputed section, which the defense would like added. It falls

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1 between two of the highlighted sections that the government is
2 offering. Tell me when you're there.

3 MR. SILVERMAN: Yes, your Honor. Does your Honor mean
4 the postarrest statement?

5 THE COURT: I'm sorry if I was not clear. Yes, the
6 postarrest statement. Sorry, I think I may have said prison
7 call. The postarrest statement. On page 8, from lines 13
8 through 28, is a nonhighlighted portion which you would like
9 put in.

10 MR. SILVERMAN: Yes, your Honor.

11 THE COURT: I fully understand the arguments you've
12 made, and I'm respectful of them. It looked to me as if what
13 you were trying to put in stops after the word "me" on line
14 either 24 or 25, that you were not seeking to add the next
15 sentence or two, which appears to be a bit of a brief switch of
16 thought. I want to make sure I understand what you are asking
17 to be put in. I understand you want to put in the marshal's
18 question and your client's response up to the word "me" on
19 line 24 or 25 and that you weren't pursuing the last two lines.

20 MR. SILVERMAN: Yes, your Honor, that's correct.

21 THE COURT: Okay. It wasn't quite clear, and I wanted
22 to make sure that was the nature of the offer.

23 The next question I have involves the prison calls,
24 and this goes to the government. The government proposes to
25 offer excerpts of two, quote-unquote, prison calls, meaning

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1 calls that were tape-recorded of Mr. Celli during his
2 postarrest incarceration before his release. By the way, could
3 you remind me, just because I'm a successor judge in the case,
4 what were the circumstances under which Mr. Celli was held and
5 under which he came to be released?

6 MS. KARMIGIOS: Your Honor, I'm also new to this case,
7 and I didn't -- I wasn't on this case at that time, so I don't
8 want to misspeak, but I'm happy to submit a letter if the Court
9 would like further information about that.

10 THE COURT: Okay. Well, that was background. The
11 important question is as follows: The parties are in agreement
12 about that the excerpts are properly offered, and, unlike the
13 postarrest statement, there is not a request that additional
14 material from the same calls be added as context. Absent from
15 the government's brief, though, is any acknowledgment that
16 Mr. Celli is in prison during these calls, and that the fact
17 that he is in prison, which is what permits him to be
18 tape-recorded, might itself have an adverse -- be adverse to
19 Mr. Celli. In other words, from a Rule 403 perspective, sure,
20 there's the probative value, such as it is of the excerpts you
21 want to offer, but some attention needs to be given to the fact
22 that he is in prison at the time. Unless you see it otherwise,
23 I don't see a way in which those calls can be admitted without
24 the jury being alerted to the fact that he was in custody at
25 the time; otherwise, it's just unexplained what was happening

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1 that led to a phone call of his to be taped, and I believe even
2 some of the excerpts of the calls themselves imply, at least,
3 that he is in custody.

4 Have you given thought to a way of mitigating whatever
5 prejudice there might be presented by the fact that the jury
6 would learn that Mr. Celli was in custody at the time of those
7 two calls?

8 MS. KARMIGIOS: Your Honor, we would request
9 potentially a limiting instruction to the jury about that.

10 THE COURT: What would it say?

11 MS. KARMIGIOS: That the -- well, my instinct would be
12 that the jury shouldn't consider or put too much weight on the
13 fact that Mr. Celli was incarcerated during the calls, but I'm
14 happy, again, to submit further briefing on that point.

15 THE COURT: Well, as I understand it, he's arrested on
16 November 14th. One of the calls is as late as December; I
17 think the other one is later in November. So, the one in
18 December inferentially would, presumably, suggest to a jury
19 that Mr. Celli had been in custody for perhaps from
20 November 14th through the date of that call in December. The
21 concern is that some juror might conclude that the fact that
22 Mr. Celli had been in custody for that period must bespeak
23 something concerning about him. And I'm trying to -- yes, of
24 course, a limiting instruction could tell the jury not to think
25 that or not to focus on that, and limiting instructions have

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1 their value. Is this something the government had given
2 thought to before it was raised by the Court today?

3 MS. KARMIGIOS: Honestly, your Honor, no, I had not
4 thought about this particular issue and what the limiting
5 instruction should look like, but I'm happy to do so and submit
6 further briefing to the Court.

7 THE COURT: Mr. Silverman, have you any additional
8 views on the matter?

9 MR. SILVERMAN: I appreciate your Honor's raising
10 this. You're correct, I didn't respond to it because I didn't
11 recognize anything that the government was putting in that
12 would explicitly make clear that these were prison calls, and,
13 certainly, there are jury instructions that are given about
14 means and methods of government surveillance that are routine
15 that the jury could not infer why or how what was being done.
16 I've seen cases where the government seeks to offer as an
17 exhibit the poster next to the phones on Rikers Island that
18 gives you the warnings that the calls are recorded, and,
19 obviously, nothing like that's being offered here. If that
20 were to be added to the government's motion, I would
21 respectfully request leave to put in a very short one-page
22 supplemental letter.

23 THE COURT: No, of course. Look, I appreciate your
24 thoughtful perspective on it. The question is: Right now, if
25 the tapes were to be played, would the jury be told anything

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1 about where Mr. Celli had been at the time the calls were
2 tape-recorded or how they came to be tape-recorded?

3 MR. SILVERMAN: I would object to that on Rule 403
4 grounds. I don't think that's relevant information. I don't
5 think it's important for the jury to know how or why the calls
6 were recorded. Juries regularly receive evidence, including
7 recordings, without knowing exactly how the recordings came to
8 be. Frequently they do, but not always.

9 THE COURT: So your proposition would be, in effect,
10 the less said, the better. Whether authenticated by a witness
11 or by stipulation, the fact that these were excerpts of phone
12 calls that Mr. Celli had on the dates indicated, assuming that
13 there's a competent witness to authenticate the tapes, the
14 tapes would come in, but nothing would be said about where
15 Mr. Celli was, and the hope would then be -- and there would be
16 an instruction that -- Mr. Celli, I need to finish speaking.
17 You're waving your hand.

18 THE DEFENDANT: Okay.

19 THE COURT: I've got you. Let me finish with
20 Mr. Silverman, and then you can confer with him.

21 Your proposition, Mr. Silverman, is the less said, the
22 better; essentially, authenticate them as tapes, do not situate
23 them in space, in venue, and give a limiting instruction that
24 instructs the jury not to speculate?

25 MR. SILVERMAN: Exactly, your Honor. And insofar as

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1 your Honor is correct that one of the statements he made refers
2 to why I'm here, I think that that doesn't necessarily -- and
3 the context is clear what he's saying. We understand what he's
4 saying, but I don't think that it's necessarily clear where
5 "here" is without the context, and I don't think that the
6 contents of the statements make clear that he is incarcerated
7 at the time.

8 THE COURT: All right.

9 It may be that Mr. Celli wanted you to communicate
10 something to me. Why don't you speak.

11 (Pause)

12 MR. SILVERMAN: Your Honor, respectfully, as a
13 proposal, Mr. Celli wishes to address this. This has prompted
14 him to remember the bail motion, which I filed on his behalf on
15 January 4th, which he alluded to earlier, and which perhaps
16 would best be left until possibly after a *Faretta* hearing.

17 THE COURT: We'll leave that for later.

18 Here's my thought for the government: Mr. Silverman
19 may well have the right answer here, that may be the one that's
20 most respectful of his client's interests. I would like the
21 government to give thought to the means and methods by which
22 the prison tapes would be received, i.e., assuming there's no
23 stipulation, who the witness is and what would be said, and
24 what, if any, instruction should go with those.

25 I'll give you a date to respond, and then,

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1 Mr. Silverman, I'd like you to have a follow-on letter
2 responding to that, so that I have the benefit of the defense's
3 view.

4 The government has told me about a straightforward
5 problem. How long until you can get me a letter?

6 MS. KARMIGIOS: Your Honor, I think I can have it done
7 by Friday.

8 THE COURT: Very good.

9 So Friday, April 9th, for a letter just limited to
10 that issue about prison calls. I'm not reopening the content
11 of the calls - I'll rule on that in a moment - but the issue
12 here just involves the means by which to mitigate any prejudice
13 to Mr. Celli. Mr. Silverman may have the right answer, but I'm
14 eager to get everyone to think about it.

15 Mr. Silverman, can I have a letter from you three days
16 thereafter, three business days, maybe April 14th?

17 MR. SILVERMAN: Yes, your Honor.

18 THE COURT: Very good.

19 Mr. Silverman, I can't tell -- excuse me. Mr. Celli,
20 your hand is up when your elbow is resting on the table. I
21 can't tell whether you want to speak, but, as a general matter,
22 it is better to go through your attorney, lest you say
23 something that harms your interests.

24 MR. SILVERMAN: Your Honor, may I have a minute --

25 THE COURT: Yes.

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(Defendant and counsel conferred)

MR. SILVERMAN: Your Honor, Mr. Celli wishes to address the Court.

THE COURT: All right. Mr. Celli, I'm focusing right now solely on the issue of the prison tapes, but if it's important to you to speak, I will permit you to do so, but I want to admonish you that there is a reason why defendants speak through their counsel and are advised to do so, and it's that each time you put something out there, you're creating a potential harm to yourself that something regrettable or untoward is said, maybe it becomes a building block, or an admission, or something unhelpful to your case. One of the reasons why it's best to have a spokesperson in court is precisely to avoid your accidentally stepping on a landmine.

THE DEFENDANT: So --

THE COURT: If you must, I'll let you speak briefly, but I'm advising you I'm trying to caution you not to do this.

THE DEFENDANT: Well, I feel that I'm being deprived of a fair trial, number one. So that -- and I wrote that to the senators as well.

The issue is, I was deprived of all due -- procedural due process that is guaranteed by U.S.-Salerno and the Bail Reform Act, and I keep on saying the last line of the bail act, and even in the decision of the Supreme Court in U.S. Salerno -- I don't know the numbers off the top of my head, it's in my

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1 briefs -- that up until trial, there could be evidence
2 resubmitted. So I was deprived five months of liberty, which
3 is a crime. The three people that were there was
4 Ms. Bensing -- sorry, not Ms. Bensing -- Ms. Brady, Judge
5 Scanlon, if I'm saying it right, and Ms. Olivera. They
6 deprived me of testifying. That is a crime, and you were the
7 head of the Southern District DOJ Criminal Division.

8 THE COURT: No, first of all -- Mr. Celli, first of
9 all, no, I was not -- that was not a job I ever held, but, more
10 to the point, I'm really trying to keep us focused. There are
11 a number of discrete issues here.

12 THE DEFENDANT: Well, the recordings have occurred. I
13 was deprived of liberty. So there's the issue.

14 THE COURT: Mr. Celli, I need to instruct you not to
15 interrupt.

16 THE DEFENDANT: I apologize.

17 THE COURT: I appreciate your views about the
18 deprivation of your liberty during your pretrial custody, but
19 the trial is not about that. It simply is not. That's not an
20 issue at trial. Whether the decision to deny you release on
21 conditions of bail was right or wrong, procedurally proper or
22 not, is simply not the issue at trial. The issue at trial --
23 and the jury will not be hearing about any of that because it
24 has nothing to do with whether or not you are guilty or not
25 guilty beyond a reasonable doubt. And right now, I'm trying to

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1 raise a series of discrete issues to make sure that I'm
2 resolving them properly, in order to assure you a fair trial.
3 That's the whole point. The reason why a judge zeros in on
4 discrete issues, like I'm trying to do, is to make sure that
5 both sides get a fair trial. So where you could be most
6 helpful to yourself is by being responsive to me when I raise
7 specific issues, and the specific issue that I'm trying to put
8 on the table is this: There are a couple of excerpts of phone
9 calls of yours that the government will be offering into
10 evidence, and I raised the issue of is there a concern that the
11 jury will draw a negative conclusion about you from the fact
12 that you were --

13 THE DEFENDANT: And --

14 THE COURT: -- in custody. Mr. Silverman, I think,
15 has the most subtle analysis of how to deal with the problem,
16 and probably the right answer. I wanted to give each side an
17 opportunity to comment. If there's something that -- when I
18 saw your hand going up, I assumed you wanted to contribute to
19 that issue. If you're going to be weighing in on some other
20 issue, like the justness of the denial of bail, I have to tell
21 you, this is not the forum for that. We are now preparing for
22 trial, and I'm trying to identify issues that will affect the
23 conduct of the trial.

24 THE DEFENDANT: But I've been trying to bring up
25 issues for two years now, and each -- and Judge Scanlon ignored

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1 it, and she threatened me, so now I have to put in a misconduct
2 because -- as for her, Ms. Scanlon, and Ms. Brady and
3 Ms. Bensing, I wrote to the senate judiciary because what
4 they've done to me is a crime, and they've been disciplined.
5 So, like, no one's hearing me. Like I have been denied a fair
6 trial.

7 THE COURT: All right. Mr. Celli, Mr. Celli, you're
8 at liberty to write people about your grievances -- it's a free
9 country -- but in the context of this conference, I am here to
10 deal with discrete issues --

11 THE DEFENDANT: And --

12 THE COURT: One second.

13 -- of the trial that will occur, and I'm very
14 solicitous of everybody's opinion on the issues that I am
15 raising. But grievances that you have about other people, and
16 including about your pretrial denial of bail, are not being
17 litigated. The jury will not be deciding whether it was or it
18 wasn't right to deny you bail. That's not what the case is
19 about. The issue in the case will be whether or not the
20 government has proven the elements of the threat offense under
21 Section 875(c) beyond a reasonable doubt. And in order to
22 assure you a fair trial, I need to make sure that my rulings as
23 to pieces of evidence are fair and consistent with the rulings
24 of evidence, and that's the spirit of the question I was
25 raising.

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1 THE DEFENDANT: So my subjective intent is that Randi
2 Weingarten, through Senator Schumer -- wait, no, because this
3 is what you are withholding, because I emailed Senator Schumer
4 on 12/11/17, and I have many auto responses from him. So this
5 is --

6 THE COURT: Mr. Celli --

7 THE DEFENDANT: Wait. I emailed the ethics committee
8 on this. I asked the senate judicial to send -- because you
9 told me I was stupid and crazy to suggest that Senator Schumer
10 had anything to do with your judgeship. And I keep on telling
11 my attorney about Judge Porteous. Judge Porteous was
12 convicted, and Senator Schumer is one of the 88 senators who
13 because -- sorry, Porteous lied about association. You lied
14 about your association with Schumer. On the record, it's
15 incumbent upon you, not me, to protect the integrity of your
16 office.

17 Now, there's a press release from Senator Schumer --

18 THE COURT: Mr. Celli, I'm going to cut you off. The
19 record of the conference at which you raised some question
20 about Senator Schumer speaks for itself. I'm quite sure I did
21 not deny that Senator Schumer had recommended me for the job I
22 hold, I sit. That's a matter of public record. The broader
23 point, though, Mr. Celli, is we need to keep focused about
24 the --

25 THE DEFENDANT: And I have been denied by Senator

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1 Schumer because of Randi Weingarten.

2 THE COURT: Okay.

3 THE DEFENDANT: And everything stems from there.

4 THE COURT: Well, all right. Maybe that's a good
5 prompt for me, then, to resolve the motions in limine, because
6 some of them will address the extent to which some of the
7 background that you're referring to has a proper place at this
8 trial.

9 Mr. Silverman, you looked as if you wanted to speak.

10 MR. SILVERMAN: That's a great proposal. Thank you,
11 your Honor.

12 THE COURT: All right.

13 So what I'm going to do now is I'm going to turn to
14 the motions in limine that are pending. For the record, I'm
15 handing a copy of the resolution that I would be reading aloud
16 to the court reporter. By way of background, though, the Court
17 has received various motions in limine from the government and
18 from the defendant, Lucio Celli. I'm going to resolve these
19 motions, to the extent I can, from the bench today. I will not
20 be issuing a written decision. Instead, I will simply issue an
21 order reflecting the fact that the motions were resolved, for
22 the reasons set forth on the record of today's conference. So,
23 if the content of what I say is important to you, you will need
24 to order the transcript of this proceeding.

25 The first motion involves Celli's postarrest

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1 statements. These were made in an interview conducted by two
2 marshals on November 14, 2018, that is recorded on video. The
3 interview lasts about 20 minutes and takes place in what
4 appears to be a cellblock. The motion here is by the
5 government. The government states that it intends to offer
6 excerpts of Celli's postarrest statement, but that it does not
7 intend to offer these in their entirety. And I'm citing here
8 Docket 100, the government's memorandum, at pages 4 to 5. The
9 government moves to preclude as hearsay certain statements that
10 Celli made in the course of the interview. Accordingly, the
11 government moves to preclude Celli from introducing any of his
12 own statements, such that the portion of the postarrest
13 statement that would be heard by the jury would be limited to
14 the excerpts highlighted in yellow in Exhibit A to the
15 government's letter.

16 Celli, for his part, does not object to the receipt of
17 the portions of the postarrest statements identified by the
18 government. And for good reason. The statements of Celli's to
19 the marshals that the government has designated are relevant
20 and probative to the issues at hand, and to the extent they
21 contain representations by Celli that the government wishes to
22 offer for the truth of the matters asserted, they are not
23 barred by Federal Rules regarding hearsay. That is because
24 they are statements by a party opponent, and, as such, under
25 Rule 801(d)(2)(A), they fall outside the definition of hearsay,

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1 if offered by the government. In contrast, if offered by Celli
2 for the truth of the matter asserted, these statements by Celli
3 would be hearsay. However, Celli argues that under Federal
4 Rule of Evidence 106, the rule of completeness, the entirety of
5 Celli's postarrest interview, or at least certain of his
6 statements that the government has not highlighted, should be
7 received. These statements, Celli argues, are necessary
8 context for his exchanges with the marshals that the government
9 plans to offer. I've cited here Docket 105, Mr. Celli's
10 opposition, at pages 2 through 4.

11 Rule 106 provides that where one party introduces a
12 portion of a document or recorded statement, "an adverse party
13 may require the introduction, at that time, of any other part –
14 or any other writing or recorded statement – that in fairness
15 ought to be considered at the same time." As the Second
16 Circuit has explained, the omitted portions of the document or
17 statement "must be placed in evidence if necessary to explain
18 the admitted portion, to place the admitted portion in context,
19 to avoid misleading the jury, or to ensure fair and impartial
20 understanding of the admitted portion." Citing *United States*
21 *v. Johnson*, 507 F.3d 793, 769 (2d Cir. 2007).

22 However, the circuit has stated: "The completeness
23 doctrine does not, however, require the admission of portions
24 of a statement that are neither explanatory of, nor relevant
25 to, the admitted passages."

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1 To the extent that Celli suggests in a sentence that
2 the entirety of his postarrest statement must be received as
3 context under Rule 106, that is not persuasive. The interview
4 covers a variety of topics. It has at various points a
5 rambling quality. It covers topics including details of
6 Celli's civil lawsuits, and personal traumas that Celli has
7 experienced, and Celli's views on various persons and matters
8 that are irrelevant in this criminal case. The vast majority
9 of the nonhighlighted portions would not shed any light or
10 provide any useful context for the discrete portions that the
11 government has highlighted. The highlighted portions cover no
12 more than about 25 percent of the interview. And, in general,
13 Celli's postarrest statements cannot be properly received for a
14 nonhearsay purpose, such as to illuminate Celli's state of
15 mind. That is because his state of mind after his arrest,
16 which came after the communication of the alleged threatening
17 emails in this case, is not relevant to the charges at issue.
18 The Court therefore rejects Celli's broadly put argument that
19 all nonhighlighted portions of his postarrest statement are
20 admissible under Rule 106. And I should add that many of those
21 portions would be prejudicial to Celli. They include portions
22 in which he becomes excitable and in which he makes accusations
23 or statements that the jury may regard as unreliable,
24 unflattering to Celli, or worse.

25 Celli, however, makes a more substantial, and more

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1 targeted, argument under Rule 106 as to two specific excerpts
2 of his postarrest statement. I'm citing now Celli's opposition
3 at 2 through 4.

4 The first excerpt appears on page 8 and covers
5 lines 13 through 24. It comes immediately after Celli has been
6 asked about the emails, and what he wrote in them, and to whom
7 he wrote them. Celli responds to those questions. Those
8 exchanges, the government plans to offer, without objection.
9 But the government proposes not to offer the following
10 question, beginning on line 13, in which the marshal probes
11 Celli's state of mind in writing what he wrote, and to which
12 Celli responds, beginning on line 17. And I am quoting now the
13 first disputed excerpt.

14 "Marshal: So what do you, I understand you're upset
15 and, um, when you stated in your email about stabbing them?

16 "Celli: I don't mean to actually do it because I'm
17 not a violent person. I want justice. Like, I don't think I
18 should have had to -- I've emailed many times without
19 threatening, and I think I submitted the right way the judicial
20 complaint, and then the New York City Mental Health came to
21 me..."

22 And I'm citing again the postarrest statement at
23 page 8.

24 The portion of Celli's response that I have quoted
25 ends on line 24. I should add that Celli's response goes on to

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1 line 28 and covers another long sentence and a short one, in
2 which Celli makes statements that appear to refer to an
3 unrelated report he made to the New York City police regarding
4 a white person and how the police responded by showing him, in
5 some fashion, it appears, pictures of African Americans. As to
6 these lines, 24 through 28, Celli does not argue that these are
7 necessary to receive in the interests of completeness. I
8 confirmed that with Mr. Silverman a few moments ago, and I
9 agree with that. That one- to two-sentence detour between
10 lines 24 and 28 is extraneous and irrelevant.

11 Critically, immediately afterwards in the interview,
12 beginning at line 30, comes another exchange that the
13 government highlights for inclusion. In it, the marshal,
14 referencing what Celli had just said, asks the following
15 leading question:

16 "So, you were aware that the emails you sent out were
17 threatening?"

18 And Celli responds, beginning at line 33, "Cause I
19 feel threatened as well because I don't know how to get justice
20 anymore, because if it's okay to threaten me, it's okay to
21 threaten back. Because they're not above the law. That's how
22 I feel."

23 The marshal then responds with this query: "And when
24 you say them?"

25 Celli responds: "The federal judges."

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1 That brief exchange is the last part of that section
2 that the government highlights.

3 Celli argues that the inclusion of this exchange is
4 necessary context for the exchange that follows, in which Celli
5 explains that he felt threatened. The government argues that
6 it must be excluded as hearsay.

7 I am persuaded by Mr. Silverman's argument on this
8 point. As he convincingly argues, the excerpt between lines 13
9 and 24 provides necessary context for the exchange that
10 follows, within the meaning of Rule 106. Without it, the
11 marshals' question about whether Celli was aware that the
12 emails he sent were threatening provides an incomplete portrait
13 of Celli's state of mind at the time he sent the emails as
14 Celli was reporting it. In effect, the marshals' question
15 zeroed in on one part of Celli's previous answer relating to
16 his awareness of the threatening quality of the emails, and the
17 marshals' question prompted Celli to elaborate on that point.
18 But if the previous answer, between lines 13 and 24, is not
19 included, it risks the jury considering Celli's ensuing answers
20 in incomplete context.

21 And that risk is particularly acute because the
22 marshal begins his question, at line 29, with the word "so."
23 He states, "So, you were aware that the emails you sent out
24 were threatening?" The word "so" is a cue. It's a cue to the
25 listener that the marshal was picking up on something that

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1 Celli had just said. If the jury does not hear the previous
2 exchange, however, there is considerable risk that they will
3 speculate about what it was that Celli had said that led to the
4 marshal, in harkening back to Celli's immediately prior
5 statement, to attribute to Celli an awareness that his emails
6 had been threatening. Fairness to Celli requires that the jury
7 know what the marshal was referring to when he concluded, and
8 asked Celli to confirm, that Celli had been aware that the
9 emails were threatening. So, I will admit lines 13 to 24 under
10 Rule 106, in fairness to Celli.

11 I do this to assure that the jury can understand the
12 ensuing exchange in the proper context, and so, government,
13 when you offer the interview excerpts, you must include the
14 lines 13 through 24 if you intend to offer the lines that
15 immediately follow, as I expect you will continue to plan to
16 do.

17 Now, Celli separately argues that an excerpt at
18 page 10, lines 22 to 32, also be received. This exchange
19 occurs a little later in the interview. At this point in the
20 interview, the marshals have asked Celli about various emails
21 he sent. Celli reads aloud from one. He then stops reading.
22 That is where the government's highlighted excerpt ceases.
23 Celli then states that certain documents were missing from the
24 Court, apparently a reference to one of his civil cases, and
25 then comes the following exchange, which Celli asks be received

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1 and put before the jury. I'm quoting now again from lines 21
2 to 32:

3 "Celli: I have the -- excuse me, I don't want to come
4 off as threatening. I apologize.

5 "Marshal: That's okay.

6 "Celli: No, because I know, I -- I apologize.

7 "Marshal: That's all right. You're a person that
8 talks with his hands. I know what you mean. You're fine.
9 You're fine, you're fine."

10 Celli argues that this exchange is admissible for two
11 reasons under Rule 106 and as evidence of his state of mind.

12 The Court is unpersuaded. Viewing the exchange
13 alongside the video, it is clear that this exchange was
14 prompted by Celli's having suddenly become very animated. He
15 waves his arms around while holding papers, apparently the
16 emails the marshals had been asking him about. And he either
17 brushes or comes close to brushing against the marshal's leg in
18 the confined space of the cellblock. That is the clear context
19 of these remarks. Celli is essentially apologizing for either
20 coming close to or invading the marshal's space, and/or for the
21 volume of his remarks. But this excerpt, unlike the earlier
22 one on page 8, does not shed any light on any succeeding or
23 preceding remarks. Rule 106 does not require the admission of
24 this excerpt. It is an apology for a brief event, the brush of
25 the papers and/or the raising of the voice, that began after

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1 the excerpt that the government intends to offer ended.

2 To the extent that Celli separately argues that the
3 exchange is probative of how the marshals interact with and
4 perceive Celli's behavior, that is not a proper basis for
5 admission either. Celli at this moment was gracious in
6 apologizing for his gesticulations and outburst. And the
7 marshals graciously acknowledged that Celli, in speaking with
8 his hands, did not mean to be threatening. But the marshals'
9 perceptions of his postarrest behavior are irrelevant to any
10 issue to be tried. Their assessments, which the transcript and
11 video suggests were to the effect that Celli had not meant
12 anything threatening by his immediately preceding gestures and
13 loud words, do not speak to Celli's mens rea or state of mind
14 at the time he took the actions at issue in this case – the
15 preparation and sending of the emails to judges that the
16 government alleges were actual threats. In any event, even if
17 Celli's civil behavior at this brief moment with the marshals
18 is some way regarded as probative of his broader capacity to be
19 civil, it would be significantly outweighed by the capacity of
20 this episode to confuse. That is because Celli's interest in
21 offering this is precisely to achieve a forbidden inference,
22 to wit, that the marshals had concluded that Celli more
23 generally was not a person capable of making actual threats or
24 inclined to make actual threats. That inference does not
25 follow from this excerpt. And even if it did, the marshals are

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1 not expert witnesses on human psychology and character. I
2 would thus exclude this excerpt under Rule 403, if it were not
3 independently inadmissible under Rule 401 and 402 as
4 irrelevant. It is confusing and potentially prejudicial.

5 Now, there is a final separate issue as to the
6 postarrest statement. Celli argues that with respect to his
7 interview by the marshals, the Court should permit the jury to
8 hear the audio, but not see the video. Citing here Celli's
9 opposition at 4 to 5. That is because Celli is handcuffed in
10 the video. Celli expresses concern that the presence of the
11 handcuffs and Celli's presence in a cellblock may be taken to
12 suggest that the marshals were too afraid to interview him
13 unrestrained.

14 Separately, Celli notes that insofar as the parties
15 and counsel will wear masks during the trial, these images of
16 him may be the only ones of him without a mask on that jurors
17 are able to see. This, too, Celli argues, favors exclusion of
18 the video.

19 The Court has carefully reviewed the postarrest
20 interview. The Court has listened to it accompanied and not
21 accompanied by the video footage. The Court's inquiry as to
22 whether to permit the video to play is under Rule 403, which,
23 again, permits the Court to exclude "relevant evidence if its
24 probative value is substantially outweighed by a danger of,"
25 among other factors, "unfair prejudice."

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1 Here, as to the handcuffs, Celli relies on *United*
2 *States v. Hurtado*, 47 F.3d 577 (2d Cir. 1995). There, the
3 Second Circuit held that a defendant should not be compelled to
4 attend trial in prison or jail clothing due to the possible
5 impact on the defendant's presumption of innocence and due
6 process right to a fair trial. *Id.* at 581. The Supreme Court
7 has similarly recognized that a defendant's wearing of prison
8 clothes or use of physical restraints in the courtroom can
9 adversely affect how jurors feel about him. See *Estelle v.*
10 *Williams*, 425 U.S. 501, 505 (1976). For this reason, of
11 course, as counsel are familiar, efforts are made as to
12 defendants who are in custody to assure that they are in street
13 or civilian clothing during trial and that they are not visibly
14 restrained in the presence of the jury.

15 Celli is not in that situation. He is not
16 incarcerated, and so at trial, he will be in civilian clothing
17 and not restrained. Under these circumstances, the negative
18 inference that may arise from a defendant's being shackled in
19 court will not arise. The handcuffing of a defendant in a
20 cellblock immediately following an arrest, by its nature, is
21 not likely to give rise among jurors to any fear of the
22 defendant, where the defendant is visibly unrestrained and at
23 liberty in court. And the body language of the marshals during
24 the interview, as reflected on the video, does not bespeak any
25 physical concern about Celli. Moreover, counsel are at liberty

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1 to establish, as I expect from my colloquy with government
2 counsel is correct, through questioning of the marshals or
3 perhaps through a stipulation, that the interview occurred
4 shortly after Celli's arrest and that it is normal procedure to
5 handcuff a person interviewed in the cellblock following his
6 arrest.

7 Under Rule 403, I therefore find a very limited
8 prejudice, if any, to the defendant from showing the video.

9 I also do not find meaningful prejudice from the fact
10 that Celli's full face appears in the video. It is, of course,
11 unfortunate that as a result of public health precautions,
12 Celli and the other personnel at trial will generally be
13 masked. That said, the jury will get a view of Celli's full
14 face at some points, including during jury selection, but that
15 does not mean there is anything prejudicial about the jury's
16 viewing Celli's face during the interview. There is nothing
17 inherently prejudicial about his face or the expressions he
18 makes during the interview.

19 On the flip side, having listened to the audio with
20 and without the video, it is palpably easier to follow by
21 video. It is clear who is speaking and what is being said, and
22 it is clear when the defendant is reading from a document as
23 opposed to responding to a question. The video promotes
24 clarity and eliminates confusion. I therefore find that the
25 probative value of the video, far from being substantially

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1 outweighed by countervailing factors such as unfair prejudice
2 or confusion, significantly outweighs those factors. So I will
3 permit the government to play the video when it plays the
4 excerpts at trial.

5 Switching gears:

6 The government next moves in limine to offer excerpts
7 of two calls that the defendant had while in prison, a call on
8 November 22, 2018, and a call on December 3, 2018. Celli does
9 not object to these excerpts being received, nor does he argue
10 that other excerpts must be received under Rule 106. The Court
11 will therefore permit these excerpts to be received at trial.

12 Now, a few moments ago, I had a colloquy with counsel
13 about a collateral issue involving the fact that these
14 interviews took place in prison. I am eager to, as best as
15 possible, minimize any possible prejudice to Mr. Celli from the
16 fact that these calls took place in prison, and I solicited
17 letters from counsel on that point. Offhand, Mr. Silverman's
18 insight appears to be the most perceptive as to the best way to
19 minimize the prejudice, but I will be eager with everyone
20 having an opportunity to reflect on the right way to handle
21 this, to get your thought-out views.

22 Next, the government moves for permission to offer
23 certain of Celli's email communications before the date of the
24 threats at issue, and his interactions with the marshals prior
25 to the date of the alleged threats, as either direct evidence

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1 or under Rule of Evidence 404(b). Celli moves to the same
2 effect. He would like his prior communications with the
3 marshals to be received as circumstantial evidence of his state
4 of mind in connection with the later threats. He would also
5 like these communications received as evidence of whether an
6 objective person would consider the November 12, 2018 emails
7 threatening. Celli does not oppose the government's motion to
8 introduce either the emails or interactions with the marshals.
9 However, the government opposes Celli's introduction of
10 evidence regarding his prior interactions with the marshals
11 insofar as Celli seeks to offer various unspecified statements,
12 which the government calls false exculpatory statements and
13 self-serving, for the truth of the matter asserted.

14 The government has filed under seal a number of
15 documents reflecting Celli's prearrest interactions with the
16 marshals and a sample of his prearrest emails. Based on the
17 documents before the Court at this point, the Court is
18 constrained to agree with Mr. Silverman's apt observation that
19 there is, as yet, no live dispute here. Both parties agree
20 that at least some of Celli's Pre-November 12th emails are
21 admissible, and that the course of dealing between Celli and
22 the marshals who confronted him about these emails is, in
23 general, properly admitted. And that is clearly correct. The
24 government is correct, in general, that Celli's emails and
25 confrontations with the marshals preceding his alleged threats

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1 to the judges in November are admissible as background to the
2 events at issue, both under Rule 402 and Rule 404(b). The
3 government's narrative appears to be that Celli became
4 progressively more enraged and retributive over time. The
5 government's narrative is further that the marshals' visits to
6 him, for which he blamed the judges in the civil cases for
7 bringing these about, are among the reasons that Celli's emails
8 escalated in tone to the point that in November, they became
9 actual threats. These dealings are clearly probative for that
10 purpose. And no party has identified, as yet, any
11 countervailing aspect of these emails or communications that
12 require their exclusion, although it may be that discrete lines
13 or words require redaction in the interest of avoiding unfair
14 prejudice, particularly to Celli.

15 From Celli's perspective, he is entitled, too, to
16 develop this course of dealing, and that is so for two reasons:
17 First, Celli may try to draw on these to rebut the government's
18 theory that his earlier dealing with the marshals provoked him
19 to greater outrage and more serious threats; and, second, Celli
20 may draw on these to argue that his subjective state of mind
21 and intent was influenced by these dealings.

22 There does not appear to be a dispute as to these
23 points. The government's opposition, such as it is, rests on
24 an apparent misconception of Celli's argument. The Court does
25 not understand either Celli or the government to be offering

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1 statements made during Celli's prior interactions with the
2 marshals for the truth of the matters asserted therein. The
3 government purports to offer these statements to "provide
4 necessary background and context to the charged offense."
5 Citing the government's memo at 6. And Celli explains that he
6 intends to offer these statements as evidence of his state of
7 mind and Federal Rule of Evidence 803(3) provides a hearsay
8 exception for just this purpose. It permits a party to
9 introduce out-of-court statements reflecting "the declarant's
10 then existing state of mind (such as motive, intent, or plan)
11 or emotional, sensory, or physical condition (such as mental
12 feeling, pain, or bodily health...)." Celli's statements made
13 during his Pre-November 14 interactions with the marshals are
14 probative of his state of mind at the time he sent the earlier
15 emails, for which he was not indicted. To be sure, as the
16 government notes, Celli has not been charged in the indictment
17 in connection with these emails, but, as the government argues,
18 in the point that favors the inclusion of this evidence for
19 both parties' use, the earlier emails and interactions with the
20 marshals are "inextricably intertwined with the evidence
21 regarding the charged offense." Citing the government's memo
22 at 6. Celli may therefore offer, in general, his statements in
23 his pre-November 14 dealings with the marshals as evidence not
24 for the truth of the matter asserted, but of his state of mind.

25 To the extent that there are statements by Celli

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1 during the pre-November 14 period that the government is
2 concerned would be improperly considered for the truth of the
3 matters asserted, the government has yet to specifically
4 identify any of these to the Court. The Court therefore has no
5 occasion to rule at this point whether discrete such statements
6 could be admitted only subject to a limiting instruction or
7 perhaps could not be admitted at all.

8 Importantly, in holding that Celli's Pre-November 14
9 interactions with the marshals are generally admissible as to
10 Celli's state of mind, the Court is not authorizing Celli to
11 rely on evidence of these interactions as evidence as to
12 whether an objective observer would consider Celli's earlier
13 emails to be threatening. The marshals cannot stand in for an
14 objective person. Their decisions how to respond in the moment
15 to Celli, or whether to arrest Celli based on those threats,
16 emails, or communications, may reflect a host of
17 considerations. These include the marshals' decisions as to
18 how to allocate their times and resources and the direction, if
19 any, they had been given as to how to respond to Celli. These
20 may also include the marshals' assessment of Celli's mental
21 state. The Court will not permit argument that because the
22 marshals did not arrest Celli, or take other action prior to
23 November 12th, an objective observer would not regard Celli's
24 Pre-November 14 emails as being not threats. These
25 communications, in other words, may be considered to the extent

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1 they bear on Celli's state of mind, but they may not be
2 considered as bearing on how an objective observer would view
3 Celli's statements.

4 Turning now to Celli's civil suit. The parties have
5 also submitted motions in limine as to the extent to which
6 Celli and the government can offer evidence as to the prior
7 civil lawsuits in which Celli participated before Judge Brodie
8 and Judge Cogan during the years 2015 to 2018. Celli has filed
9 a related pro se letter related to this point. See Docket 123.
10 The fact and broad nature of these lawsuits, and Celli's
11 posture in them, and the status of the lawsuits at the time of
12 the alleged threats are all properly being put before the jury.
13 So, too, are the developments in the lawsuits that are alleged
14 to have provoked Celli to begin and continue his emails to the
15 judges and others.

16 However, the details of the two civil lawsuits, and
17 any other civil lawsuits to which Celli was a party or
18 participant, are largely irrelevant to the current case. The
19 prosecution is not about those lawsuits. It is not about who
20 was right or wrong in them. That is because threats are not
21 defensible on the ground that they were made to avenge
22 erroneous rulings or unfortunate developments. Evidence beyond
23 more than necessary to give brief background and context about
24 Celli's civil lawsuits would not add probative value. On the
25 contrary, it would potentially distract the jury, misleading

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1 the jury to believe that the merit of those lawsuits were at
2 issue, and it is not. And it would potentially waste time,
3 potentially a lot. Such evidence is thus clearly properly
4 excluded under Rule 403.

5 To assure that there is clarity as to what is
6 permitted, the Court directs the parties to confer as to the
7 evidence to be offered about the civil lawsuits. The Court
8 further directs the parties to present to the Court, by two
9 weeks before the start of trial – that is May 3rd – with
10 letters setting out their respective views as to the evidence
11 relating to the civil lawsuits that each would seek to offer at
12 trial. While the Court's statements today should give counsel
13 ample guidance, these submissions will enable the Court to
14 resolve any concrete disputes that may linger as to the limited
15 information about the civil suits that may be properly elicited
16 at trial as context for the alleged threats that followed.

17 All right. Switching gears: The government next
18 moves "to preclude the defendant from presenting evidence or
19 making arguments referencing any First Amendment right to have
20 sent the November 12, 2018 emails because no such right
21 exists." Quoting the government's memo at 9. The defense
22 acknowledges that the First Amendment does not give citizens a
23 right to make threats such as to kill a federal judge. Citing
24 Celli's opposition at 6, referring to the "nonexistent First
25 Amendment right to threaten." And, thus, there does not appear

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1 to be a live dispute as to this issue. It appears to be common
2 ground that the First Amendment is not a fit subject for
3 counsel to comment on before the jury. Nevertheless, for the
4 sake of assuring that there is no confusion on this point, the
5 Court will address the issue.

6 The only role that the First Amendment plays in cases
7 under 18, U.S.C., Section 875(c) is insofar as it informs the
8 lawful reach of the statute. The First Amendment allows
9 statements that are "true threats" to be prohibited and
10 criminally prosecuted, including under Section 875. As the
11 Second Circuit has put the point, "Prohibitions on true threats
12 – even where the speaker has no intention of carrying them
13 out –...are fully consistent with the First Amendment." I'm
14 citing *United States v. Turner*, 720 F.3d 411, 420 (2d Cir.
15 2013). Whether the evidence permits a jury to find beyond a
16 reasonable doubt that a particular statement is a true threat
17 and therefore outside the protection of the First Amendment is
18 a legal determination for the Court. The Court will make that
19 determination at the close of the evidence, assuming that a
20 motion to this effect is made by the defense under Federal Rule
21 of Criminal Procedure 29. The application of the First
22 Amendment is not a subject for counsel to take up before the
23 jury. The Second Circuit has squarely so held, and I quote:
24 "The question of the application of the First Amendment to the
25 statute here is properly for the Court rather than the jury."

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1 *United States v. Kelner*, 534 F.2d 1020, 1028 (2d Cir. 1976).

2 Counsel's roles are instead in guiding the Court as to
3 the proper jury instruction and then in arguing before the jury
4 whether the evidence establishes the elements of the offense of
5 Section 875(c) as charged. It's premature for the Court to
6 anticipate the particular instruction it will give. However,
7 Judge Sand's treatise offers, as usual, a useful overview of
8 the elements of this offense. I'm citing Leonard Sand, et al.,
9 Modern Federal Jury Instructions (2016 ed.). Instruction 31-7
10 in that venerable treatise lists the following as the three
11 elements of Section 875(c) that the jury, to convict, must find
12 beyond a reasonable doubt: (1) that "the defendant threatened
13 to kidnap or to injure [the victims]"; (2) that "the threat was
14 transmitted in interstate or foreign commerce"; and (3) that
15 "the defendant transmitted the threat knowingly and
16 intentionally."

17 Celli argues that he (1) "should be permitted to argue
18 to the jury that Mr. Celli cannot be convicted merely because
19 his statements are crude and inflammatory"; (2) "that knowledge
20 that statements are offensive or startling does not equal
21 intent to threaten"; and (3) "that the jury can use its common
22 sense and everyday experiences to infer that a citizen like
23 Mr. Celli would believe that he has every right to say
24 offensive things." I'm citing Celli's opposition at 6. As to
25 the first two of these points, these concepts, to the extent

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1 they capture propositions of law, are in the proper province of
2 the Court's instructions to the jury. These instructions,
3 however they are ultimately put, will make clear that the fact
4 that a statement is crude, or inflammatory, or offensive, or
5 startling alone does not make it a threat. The model Sand
6 instruction, instruction 31-7, says essentially this, and I
7 quote: "A threat is a serious statement as distinguished from
8 idle or careless talk, exaggeration, or something said in a
9 joking manner. For a statement to be a threat, the statement
10 must have been made under such circumstances, that a reasonable
11 person who heard or read the statement would understand it as a
12 serious expression of an intent to inflict bodily injury (or
13 murder or kidnap)." It will be for counsel to argue the point
14 of whether the facts satisfy that standard.

15 And as to the third point being made by Mr. Celli, as
16 the Court will instruct the jury, the jury may use its common
17 sense and everyday experience in finding the facts. And
18 counsel on both sides will surely invoke common sense and
19 experience in arguing whether the elements have been
20 established. But it's not for counsel to argue, whether based
21 on common sense or otherwise, what the law is. That is the
22 province of the Court. The Court expects to instruct the jury,
23 broadly consistent with the model instructions of the Sand
24 treatise, that the government must prove that the defendant
25 "made the statement intending it to be a threat or with the

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1 knowledge that the statement would be viewed as a threat." The
2 Court expects to further instruct the jury, in substance – I'm
3 quoting Sand again – "The government must prove that the
4 defendant intended the communication be received by [the
5 victim] as a threat. The government is not required to prove
6 that the defendant intended to carry out the threat." These
7 instructions will fully safeguard the defendant's right not to
8 be convicted based on protected speech that falls short of
9 being a true threat. Counsel may also argue, and the Court
10 expects that counsel on both sides will, that the jury can
11 consult its common sense in determining whether the evidence
12 has established these elements. But to be clear, it's for the
13 Court, not counsel, to instruct the jury as to the law. So, if
14 anything is to be said to the jury about the relationship
15 between the First Amendment and the statute, it is for the
16 Court to do so, not counsel.

17 One final point: There is no constitutional right to
18 make threats that fall within the scope of the statute as
19 defined by its elements. And it does not appear that the
20 defense is planning to argue otherwise or that Celli thought
21 that there was such a right. The defense, it appears, will be,
22 in whole or in part, that the statements should not be found as
23 threats or that Celli did not have the requisite intent to
24 threaten. For avoidance of doubt, however, the defense will not
25 be permitted to make an argument sounding in nullification,

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1 to wit, that the statute should not be enforced, for example,
2 because it offends a juror's view of what the Constitution
3 should protect. Counsel will be at liberty at the close of the
4 evidence to argue to the Court that the evidence, as a matter
5 of law, is insufficient, and if that argument fails, counsel
6 will be at liberty to argue to the jury that the evidence does
7 not establish the elements beyond a reasonable doubt. Counsel
8 may not, however, argue that if the elements are established
9 beyond a reasonable doubt, the statute should not nevertheless
10 be enforced.

11 Final point: Celli moves to redact any offensive or
12 sexist remarks in any emails of his that the government offers
13 at trial. See Celli memo at 17. Celli argues that certain
14 offensive remarks of his are likely to inflame the jury and
15 should be excluded under Rule 403. However, the government has
16 indicated that it intends to confer with defense counsel
17 regarding exhibits, so as to moot the need for the Court's
18 intervention in this matter. Accordingly, the Court declines
19 to rule on this motion at this time. The Court is confident
20 that counsel, working together, can agree upon appropriate
21 redactions.

22 That ends the motions in limine.

23 Let me just check with our court reporter, before we
24 move to the next segment, whether you would like a comfort
25 break?

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(Discussion off the record)

THE COURT: Why don't we do this: It's 3:17. I'll see you at 3:25, and at that time, we'll pivot to the *Faretta* portion of the conference. Thank you.

(Recess)

THE COURT: Welcome back, everyone. Back on the record.

I now want to pivot to the request that was made in Mr. Silverman's letter of March 29th in which he states that Mr. Celli informs him — informs Mr. Silverman — that he, Mr. Celli, wishes to represent himself at the coming trial.

I have removed from the equation the concern that Mr. Silverman might be a fact witness. Even with that removed, Mr. Silverman, I take it Mr. Celli is still interested in exploring representing himself at trial?

MR. SILVERMAN: Yes, your Honor.

THE COURT: All right. Then given that, Mr. Celli, as I'm sure Mr. Silverman has explained, there is a process by which a judge has to engage, in effect, have an extended conversation with the defendant because that's an extremely serious and fraught decision, and there is case law from the Supreme Court that structures the conversation I am to have with you, so that, at the end of the day, I can determine whether to approve a request like that, and many of them are not approved and some are, but it ultimately turns on the

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1 responses that I receive and my assessment after that. So what
2 I'm going to have happen is Mr. Smallman is going to place you
3 under oath, and I will confirm that you understand what it
4 means to be under oath, and then I will put a series of
5 questions to you which you will be obliged to answer under
6 oath.

7 THE DEFENDANT: Sure.

8 THE COURT: Before we begin, Mr. Silverman, I take it,
9 you have reviewed with Mr. Celli the nature of the questions
10 that a court tends to put to a defendant who seeks to represent
11 himself?

12 MR. SILVERMAN: I have, your Honor. And just to
13 preview two quick points: One, Mr. Celli will explain this
14 during his allocution. When asked if this is knowing and
15 voluntary, which is a critical part of the inquiry, his answer
16 will be: It's not what he wants; he wishes he had a lawyer who
17 would defend him in a way that he thinks is appropriate, and
18 that that would be his preference. He understands that your
19 Honor said that there would not be another substitution for the
20 reasons that have previously been stated, and he, therefore,
21 wishes to represent himself. And so far as voluntariness means
22 coercion, threats, or that kind of duress, Mr. Celli will
23 allocute on his own, but I just want to preview that point.

24 And your Honor has, no doubt, reviewed the
25 government's proposed *Faretta* questions, and your Honor has

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1 your own questions, I'm sure, but I just want to note two quick
2 things on the government's questions, if it's okay with the
3 Court.

4 THE COURT: Sure. I have my own questions, but I'd be
5 happy to get your perspective on the government's.

6 MR. SILVERMAN: I appreciate that. Thank you.

7 On their question 16, I would respectfully --

8 THE COURT: Read that one aloud. I've got my own.

9 MR. SILVERMAN: Question 16 is: "Do you understand
10 that once you make this decision, it is not a situation where
11 you can change your mind, for example, after the trial begins,
12 and go back and forth, and say that you need a lawyer for this
13 or that, even if I appoint you standby counsel, that counsel
14 will serve only as your legal advisor and is unlikely to be in
15 a position to take over for you at trial? Do you understand
16 that?" That's the government's letter, Docket 130, at page 3,
17 question number 16.

18 And I would -- just with respect to that one question,
19 I would respectfully offer that that language is a bit strong.
20 *Faretta* itself came up with the term "standby counsel." It
21 contemplates standby counsel. I agree that it is something to
22 advise that going back and forth is not practical, like a
23 see-saw, but I believe Mr. Celli will tell the Court that there
24 may be things he's amenable to assistance from counsel for,
25 including the questioning of some witnesses and including

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1 ongoing negotiations with the government about a resolution.
2 If he's amenable to that kind of assistance, or if he decides
3 that he's amenable to that kind of assistance, I would
4 respectfully request that the Court exercise its discretion to
5 allow him to receive it. I appreciate that that's within the
6 Court's discretion.

7 And as a final point, the government notes in its
8 point 9 that it calculates the guidelines after trial at 33 to
9 41 months, and I would only note that when reviewing this with
10 Mr. Celli, and as I say now, that's the government's
11 calculation of the guidelines, and I would just respectfully
12 request that the Court not adopt them formally, as it's clearly
13 not the right time.

14 THE COURT: I did not have any intention of quoting
15 any guideline range. May I ask you whether that calculation
16 would credit Mr. Celli for acceptance of responsibility if
17 there was a disposition?

18 MR. SILVERMAN: That calculation, as I understand the
19 government's calculation, would not credit it, so it would be
20 lower on a disposition. And, of course, it doesn't -- it
21 applies enhancements that we would litigate if it got to that
22 point.

23 THE COURT: Do you know what the government's
24 calculation would be if Mr. Celli accepted responsibility?

25 MR. SILVERMAN: Yes, your Honor. And, in fact, I just

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1 flag, in case your Honor wants to allocute Mr. Celli on whether
2 there's ever been a plea offer at any point in this case. I
3 don't know if this is the time the Court --

4 THE COURT: I usually do that closer to trial, but it
5 may well be worth doing now. But keep going.

6 MR. SILVERMAN: Mr. Celli is prepared to allocute on
7 that, and the government did, in 2019, when Mr. Celli was
8 represented by the Federal Defenders, provide a plea offer that
9 contained a guidelines of 24 to 30 months on a plea.

10 THE COURT: Is that what you would get if you
11 subtracted three points from the government's 33 to 41?

12 MR. SILVERMAN: Yes, your Honor.

13 THE COURT: All right.

14 MS. KARMIGIOS: Your Honor, I'm sorry, I believe
15 that's the two points, but the third point would be 24 to 30
16 months. I may have misheard what he said.

17 THE COURT: Sorry. I think my question to
18 Mr. Silverman was if you subtracted three points from the
19 offense level that yielded 33 to 41, would you get 24 to 30.

20 MS. KARMIGIOS: Yes. Sorry, your Honor, I
21 misunderstood.

22 THE COURT: He said yes.

23 MS. KARMIGIOS: Yes, that's correct.

24 THE COURT: All right.

25 Let's take up a couple of those preliminaries first,

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1 and then we'll move on here. I think it would be informative
2 just to understand whether there has been a plea offer in the
3 case. Government, are you prepared to proffer as to any plea
4 offer that has been extended?

5 MS. KARMIGIOS: Yes, your Honor. It was before my
6 time, but I've spoken to my predecessor, and I do have
7 information about that plea offer.

8 THE COURT: Please just put it on the record.

9 MS. KARMIGIOS: It was in October -- sorry, your
10 Honor. Just one moment.

11 (Counsel confer)

12 MS. KARMIGIOS: My apologies, your Honor. I'm
13 confirming the date that it was extended.

14 It was extended in May of 2019, and it was to plead
15 guilty to the sole count of the indictment. Would your Honor
16 like me to go through --

17 THE COURT: Just what the terms of the offer would be.

18 MS. KARMIGIOS: Sure.

19 THE COURT: The essential terms.

20 MS. KARMIGIOS: Excuse me?

21 THE COURT: The essential terms.

22 MS. KARMIGIOS: Sure.

23 To plead guilty to the sole count of the indictment,
24 which carries a maximum term of imprisonment of five years, a
25 minimum term of zero years and a supervised release term. We

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1 calculated the base offense level under 2A6.1(a)(1) as 12, we
2 included a two-point enhancement because the offense involved
3 more than two threats, and a six-point enhancement for official
4 victims those were the enhancements that defense counsel has
5 indicated they would litigate, were we to get to that.

6 And, again, we did account for three acceptance points
7 and getting to a range of 24 to 30 months with a criminal
8 history category of I.

9 THE COURT: And that proposed plea offer was a firm
10 written plea offer?

11 MS. KARMIGIOS: Yes, your Honor.

12 THE COURT: I take it the offer essentially benefits
13 Mr. Celli only insofar as it locks the government in to not
14 taking a more aggressive position of the guidelines, but
15 insofar as there's no count being dismissed, Mr. Celli also, at
16 any given time, would have had the right to plead guilty and
17 reserve all his rights as to how the guidelines applied?

18 MS. KARMIGIOS: Yes, your Honor. And also pursuant to
19 the plea agreement, the government would take no position
20 concerning where within the guidelines range the sentence
21 should fall and make no motions for upward departures.

22 THE COURT: Okay. Thank you. That's helpful.

23 What was the disposition of that plea offer?

24 MS. KARMIGIOS: It's my understanding it was rejected,
25 your Honor.

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1 THE COURT: Who was defense counsel at the time,
2 Federal Defenders?

3 MS. KARMIGIOS: Yes. I believe it was Michael Weil,
4 of the Federal Defenders.

5 THE COURT: Mr. Silverman, understanding that that
6 came before your time, does that accord with your understanding
7 of the history of plea offers in the case?

8 MR. SILVERMAN: Yes, your Honor. I would just note
9 that I think the May date may be -- Ms. Karmigios, neither she
10 nor I were on the case at the time -- I think that may be the
11 date it expired. It was offered in April. The reason I note
12 that is there was a change of counsel at precisely that time,
13 so I believe Mr. Celli was represented by both Michael Weil, of
14 the Federal Defenders, and Michael Hueston, of the CJA panel,
15 while the offer was open.

16 THE COURT: I see.

17 Ms. Karmigios, has there been any other plea offer
18 extended in this case, to your knowledge?

19 MS. KARMIGIOS: No, there has not, your Honor.

20 THE COURT: Is that consistent with your
21 understanding, Mr. Silverman?

22 MR. SILVERMAN: Yes, your Honor.

23 THE COURT: Mr. Celli, is what has been said correct
24 about the history of plea offers?

25 THE DEFENDANT: No. There was supposedly one more in

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1 July of this year, July of 2020, but Mr. Taylor lies all the
2 time, so I don't know if it's true or not.

3 THE COURT: Mr. Taylor?

4 THE DEFENDANT: Mr. Taylor lied all the time, so I
5 don't know if it was true or not.

6 THE COURT: Did you ever see anything in writing?

7 THE DEFENDANT: No. It was just verbal.

8 MR. SILVERMAN: Your Honor --

9 THE COURT: Go ahead, Mr. Silverman.

10 MR. SILVERMAN: If I may, my understanding is that
11 there were discussions when Mr. Taylor represented Mr. Celli
12 prior to my appointment that were informal in nature, and that
13 Mr. Taylor presented Mr. Celli with an informal suggestion that
14 something might be possible, and it was also rejected, but
15 there was never a formal plea offer at that time.

16 THE COURT: It was rejected in the sense that what
17 Mr. Taylor floated to Mr. Celli was rejected, but you are not
18 representing that the government, during Mr. Taylor's
19 representation, made another plea offer; is that correct?

20 MR. SILVERMAN: Correct, your Honor. There was never
21 a formal offer, that I'm aware of, after the one in 2019.

22 THE COURT: So, Mr. Celli, understanding that you
23 heard what you heard from Mr. Taylor, did you ever see a
24 written -- second written formal offer?

25 THE DEFENDANT: No.

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1 THE COURT: All right.

2 Before we go to the *Faretta* issue, Mr. Silverman, you
3 were the fourth or fifth lawyer, depending on how we count
4 this, in the case, and I think what you were saying to me is,
5 actually, if Mr. Celli could have a lawyer who better suited
6 his interests and said more of what he wanted the lawyer to
7 say, he might be willing to have a successor to you, it's only
8 because he perceives this Court as putting an end to the
9 sequence of lawyers without very just cause that his choice has
10 become you or self-representation.

11 MR. SILVERMAN: I think that's fair, your Honor, yes.

12 THE COURT: May I ask you, Mr. Silverman, and I ask
13 you to answer as an officer of the Court, to comment on the
14 state of the attorney-client relationship? In particular, the
15 question here is: I understand, given the history, Mr. Celli
16 has had a history with lawyers in civil and criminal cases that
17 have not ended well, period, full stop. The question is
18 whether there is something really realistically reparable, such
19 that the problem here is about you and him as opposed to any
20 lawyer and him?

21 MR. SILVERMAN: Your Honor, I don't think the issue
22 here is a breakdown in communications or an inability to work
23 together. I think the issue is more that Mr. Celli wants to
24 proceed in certain ways that, as an officer of the Court, I am
25 not able to, and that other counsel have expressed this view --

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1 THE COURT: The same view as you?

2 MR. SILVERMAN: Correct.

3 -- and under those circumstances, Mr. Celli would like
4 to proceed on his own. But it is not a reflection of a
5 breakdown in communications between Mr. Celli and myself.

6 THE COURT: It's that there are areas of advocacy that
7 you don't believe you can, consistent with the practice and
8 ethics rules, engage in that he would like you to do, not that
9 there is a loss of respect or communicative ability?

10 MR. SILVERMAN: Precisely, your Honor.

11 THE COURT: May I ask you this -- and we'll go through
12 the *Faretta* inquiry, because I am eager to take that up with
13 Mr. Celli -- but I wonder if there's a place in this process for
14 an ex parte meeting between counsel and the Court to probe some
15 of that? The reason I say that is that, to the extent that
16 what we're talking about here is defense strategy -- Mr. Celli
17 has his visions of defense strategy, you have your views as to
18 what the red lines are here that can't be crossed from an
19 ethics or professional practice or responsible lawyering
20 perspective -- the government's not properly privy to that, they
21 should not know what the strategic calls are that the defense
22 team is considering, but that may be important for the Court to
23 hear because I may need to make a determination whether the
24 problem here is, as you describe it, one involving fundamental
25 issues that a lawyer -- a responsible lawyer would place on the

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1 advocacy that can be made on Mr. Celli's behalf as opposed to
2 something personal between present counsel and the client. It
3 may also be that an ex parte communication in which I probe
4 these issues has a salutary effect to the extent Mr. Celli is
5 listening --

6 THE DEFENDANT: I'm listening.

7 THE COURT: -- in hearing the Court assess whether
8 counsel's perceptions are correct about what lines of advocacy
9 would be out of bounds under the rules of evidence. For
10 example, if you imagine that there is some defense theory that
11 literally is incompatible with the rules of evidence, whatever
12 it would be, and you were to say that to Mr. Celli, he might
13 not be pleased with you for saying that; if I were, upon
14 presentation of it, to find that you are right about that,
15 perhaps that would have a salubrious effect on the relationship
16 because it's not you, it's the umpire saying that that's just
17 not allowed.

18 MR. SILVERMAN: Everything your Honor said makes
19 perfect sense, and we have absolutely no objection to an
20 ex parte proceeding along the lines of what your Honor just
21 proposed.

22 THE COURT: All right.

23 Here's, then, what I would propose to do: Let me go
24 through the *Faretta* inquiry with Mr. Celli -- I want him to
25 understanding the implications of the request -- but it may well

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1 be after that inquiry, that we schedule a conference,
2 presumably for next week, at which we can follow this up after
3 you've had a little time with Mr. Celli because I want to make
4 sure that the way you see things is correct, which is to say,
5 the issue is about the range of motion that any lawyer would
6 have relative to the requests that Mr. Celli is making of the
7 lawyer in terms of courtroom ethics.

8 MR. SILVERMAN: Yes, your Honor.

9 THE COURT: I just want to make sure, that's a
10 sensible way to approach?

11 MR. SILVERMAN: Yes, your Honor.

12 THE COURT: Government counsel, what's your view about
13 that, just as a process?

14 MS. KARMIGIOS: No objection from me, your Honor.

15 THE COURT: All right. So let's go through the
16 *Faretta* inquiry, and we'll see where we go with that.

17 Mr. Smallman, would you kindly place Mr. Celli under
18 oath.

19 (Defendant sworn)

20 THE COURT: Mr. Celli, do you understand that you're
21 now under oath, and that that means that any false statement
22 you make may subject you to --

23 THE DEFENDANT: Another trial.

24 THE COURT: -- another prosecution for the crime of
25 perjury?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: I'm going to ask you some questions at the
3 beginning that I know the answer to, it's just a matter of
4 making a clear record, so don't treat it as ignorance, and you
5 will see why with the very first question.

6 What is your name?

7 THE DEFENDANT: Lucio Celli.

8 THE COURT: How old are you?

9 THE DEFENDANT: Forty-five.
10 Forty-five.

11 THE COURT: How far did you go in school, Mr. Celli?

12 THE DEFENDANT: I have a Master's degree.

13 THE COURT: What is your Master's in?

14 THE DEFENDANT: Special ed.

15 THE COURT: When did you receive a Master's?

16 THE DEFENDANT: 2002.

17 THE COURT: Where did you get the Master's?

18 THE DEFENDANT: Touro College.

19 THE COURT: Good for you.

20 Did you teach in the public school system?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: Good for you. I have great admiration for
23 the teachers in our public school system. I'm the child of
24 one.

25 Are you presently under the care of a psychiatrist or

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1 a doctor?

2 THE DEFENDANT: Yes.

3 THE COURT: Without going into great detail, can you
4 describe at a high-level what that -- just in a few sentences,
5 what the nature of the care is for?

6 THE DEFENDANT: For anxiety and PTSD.

7 THE COURT: How long have you been under that care?

8 THE DEFENDANT: Currently? Since -- the current
9 doctor, since January.

10 THE COURT: And prior to that doctor, had there been
11 other doctors?

12 THE DEFENDANT: Yes, other doctors.

13 THE COURT: Let me just finish the question, just so
14 it's clear on the record what I'm asking.

15 Prior to that doctor, had you been treated by other
16 doctors for the same or similar conditions?

17 THE DEFENDANT: Yes.

18 THE COURT: How long did that go back?

19 THE DEFENDANT: On and off for about ten years.

20 THE COURT: Are you on any medication for any of those
21 conditions?

22 THE DEFENDANT: Mostly Klonopin. I take it for --
23 Lorazepam, whatever it's called. Lamictal. I was taken off of
24 Buspar because I was on it for a while. And there's one more,
25 I don't remember the name.

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1 THE COURT: Do those medications affect your ability
2 to think clearly?

3 THE DEFENDANT: No.

4 THE COURT: Is your mind clear today?

5 THE DEFENDANT: Yes.

6 THE COURT: Other than what we've just discussed, have
7 you received any medical care for any mental illness?

8 THE DEFENDANT: Just what I described.

9 THE COURT: Nothing else than the conditions you
10 described a moment ago?

11 THE DEFENDANT: No.

12 MR. SILVERMAN: Your Honor, may I have a moment?

13 THE COURT: Of course.

14 (Defendant and counsel conferred)

15 THE DEFENDANT: My lawyer instructed me to tell you
16 about I've seen a mental health expert, Eric Arnold, currently
17 a social worker, Gordon Weiss, and a therapist at Rockland
18 Daytop.

19 THE COURT: Have you ever received care at a
20 hospital -- other than what you've described, have you received
21 any other care, including in a hospital, for any mental health
22 problem?

23 THE DEFENDANT: Not that I remember.

24 THE COURT: In the past 24 hours, other than what
25 you've just described to me, have you taken any medicine,

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1 pills, or drugs of any kind?

2 THE DEFENDANT: I took Klonopin, Lorazepam – whatever,
3 I forget what the name brand is – and Lamictal.

4 THE COURT: In the last month, have you used alcohol
5 or any illegal drugs?

6 THE DEFENDANT: No.

7 THE COURT: And, again, your mind is clear today, you
8 said. Do you understand what the nature of this proceeding is?

9 THE DEFENDANT: Yeah, well, you've rendered your
10 decision on the in limine, and now we're doing the *Faretta*,
11 *California v. Faretta* hearing.

12 THE COURT: Just tell me, then, in your own words,
13 because we lawyers throw around case names willy-nilly, what do
14 you understand the purpose of what we're engaged in?

15 THE DEFENDANT: I haven't read the decision in quite
16 some time. I know it's for pro se. That's all of my
17 recollection of the opinion is.

18 THE COURT: Putting aside the opinion, what do you
19 understand the purpose of the conversation I had with
20 Mr. Silverman, and now the conversation I'm having with you,
21 what's the purpose of that, as you understand?

22 THE DEFENDANT: Well, for you to ascertain whether or
23 not I am competent enough to defend myself and whether I'll
24 comport myself in a certain way. That's what I assume.

25 THE COURT: From my perspective, the purpose of this

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1 inquiry is prompted by your request --

2 THE DEFENDANT: Oh, okay.

3 THE COURT: -- for leave to represent you.

4 THE DEFENDANT: Oh, yes, my request. I'm thinking
5 about what we're doing right now.

6 THE COURT: Well, that's -- I see, yes, immediately in
7 the last few minutes, I'm assessing your competence, but in
8 terms of the broader purpose of the whole line of questions
9 that I've just begun on, do you understand what the purpose of
10 this whole --

11 THE DEFENDANT: Yeah, my request to go pro se.

12 THE COURT: Okay.

13 Are you aware that you have a right, under the
14 Constitution, to have an attorney represent you at a criminal
15 trial?

16 THE DEFENDANT: Yes. Under the Sixth Amendment, yes.

17 THE COURT: Do you understand that you have the right,
18 as well, to represent yourself in this criminal case, including
19 at the trial?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you ever attended law school?

22 THE DEFENDANT: No.

23 THE COURT: Have you ever studied law?

24 THE DEFENDANT: Informally.

25 THE COURT: What does that mean?

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1 THE DEFENDANT: Oh, well, you know, I -- not
2 currently, but, you know, while I was in jail, I did
3 LexisNexis. Prior to not being deprived of the internet, I did
4 case texts. I read law journals on various topics. You know,
5 I've downloaded them. I've printed them out, so I can have
6 them.

7 THE COURT: Have you ever taken a class --

8 THE DEFENDANT: No.

9 THE COURT: -- in the law?

10 Even apart from being at law school as an
11 undergraduate or anything like that, even at high school, have
12 you ever taken a class in the law?

13 THE DEFENDANT: I mean, there's been sections on bench
14 law, but that's about it, but nothing...

15 THE COURT: There's been no class you've ever taken at
16 any level that was about the law; is that correct?

17 THE DEFENDANT: No, not specifically.

18 THE COURT: My statement was correct?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. All right.

21 I think I know the answer to this, but I need you to
22 answer. Have you ever represented yourself in any legal
23 proceeding?

24 THE DEFENDANT: Yes.

25 THE COURT: What legal proceeding was that?

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1 THE DEFENDANT: Civil.

2 THE COURT: Which case or cases?

3 THE DEFENDANT: The one before Judge Brodie and the
4 one before Judge Cogan.

5 THE COURT: Did you represent yourself for the
6 entirety of those proceedings or only part?

7 THE DEFENDANT: With Judge Cogan, I had a private
8 attorney that I fired, and then with Judge Brodie, it was all
9 by myself.

10 THE COURT: All what?

11 THE DEFENDANT: All by myself.

12 THE COURT: Let's focus on the case in front of Judge
13 Brodie.

14 What was the experience like representing yourself in
15 front of Judge Brodie?

16 THE DEFENDANT: The one time that I saw her in person,
17 she was pleasant, nice person. That's how I would describe
18 her.

19 THE COURT: How did you find the act of carrying out
20 the functions of a lawyer as a nonlawyer in that case?

21 THE DEFENDANT: I wasn't focused on -- I was just
22 focused on Betsy, so I don't know what to tell you.

23 THE COURT: You were focused on?

24 THE DEFENDANT: I was focused on Ms. Combier.

25 THE COURT: She was your adversary?

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1 THE DEFENDANT: Yes.

2 THE COURT: Right. But if you had a case, you were
3 the plaintiff in that case in front of --

4 THE DEFENDANT: I was the defendant, and I did a
5 cross-complaint.

6 THE COURT: Okay. In those capacities, did you have
7 to file legal papers?

8 THE DEFENDANT: Oh, yeah, definitely.

9 THE COURT: Either on your own or in response to the
10 other side?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: How did you find that project? How did
13 you find -- was that hard, were you able to accomplish what you
14 needed?

15 THE DEFENDANT: I think so. You know, whether I did
16 it right or wrong is another question.

17 THE COURT: Did you ever have to give an argument in
18 court or --

19 THE DEFENDANT: No.

20 THE COURT: -- were you simply submitting papers?

21 THE DEFENDANT: Just submitting papers.

22 THE COURT: Did you ever have occasion in the case in
23 front of Judge Brodie to make an oral presentation to her about
24 an issue in the case?

25 THE DEFENDANT: She never required me; she only

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1 required it of Ms. Combier.

2 THE COURT: So the extent of your functioning in the
3 role of a pro se lawyer was limited to the submission of
4 papers; is that correct?

5 THE DEFENDANT: Yep.

6 THE COURT: May I ask you what the outcome of the case
7 was?

8 THE DEFENDANT: Dismissed.

9 THE COURT: Well, you said that there were claims in
10 both directions. What happened to the claims against you?

11 THE DEFENDANT: Dismissed.

12 THE COURT: And what happened to the claims you
13 brought?

14 THE DEFENDANT: It was dismissed.

15 THE COURT: From the way -- did the judge write a
16 decision that dismissed all the claims?

17 THE DEFENDANT: Repeat that, your Honor.

18 THE COURT: How did it come to pass that the claims
19 were dismissed?

20 THE DEFENDANT: Judge Brodie asked for Magistrate Mann
21 to write a report, and she adopted that one.

22 THE COURT: I see.

23 And did Judge Mann's report recommend dismissal of
24 everybody's claims?

25 THE DEFENDANT: Yes, I believe so.

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1 THE COURT: Did Judge Mann's report say anything about
2 the arguments you had made either on your other side's claims
3 or in support of your claims?

4 THE DEFENDANT: If I say anything, I would -- I don't
5 remember. Honestly, she dismissed them, but I don't know the
6 exact wording, I don't know what was said. I don't remember.

7 THE COURT: Mr. Celli, again, under oath, I'm just
8 trying to get a real feel on this. How comfortable did you
9 feel with legal materials, making arguments about cases, and
10 rules, and evidence? How comfortable did you feel doing that
11 in that case?

12 THE DEFENDANT: Well, based on what I've read, and
13 like I got annotated rules of evidence, I got annotated rules
14 of discovery -- not discovery -- rules of criminal procedure,
15 obviously, I read what I read, and then I assume that that's
16 the argument I will make and that I believe that's the right
17 argument.

18 THE COURT: Did you feel, at times, that there were
19 concepts that you had difficulty understanding, legal concepts?

20 THE DEFENDANT: No.

21 THE COURT: Tell me about the case in front of Judge
22 Cogan. You said you had a private attorney --

23 THE DEFENDANT: Yes.

24 THE COURT: -- who you fired.

25 Briefly, what was the nature of the case in front of

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1 Judge Cogan?

2 THE DEFENDANT: It was a Title 7.

3 THE COURT: And that's a case where you were the
4 plaintiff, right?

5 THE DEFENDANT: Yep.

6 THE COURT: And you sued -- who did you sue again?

7 THE DEFENDANT: The DOE.

8 THE COURT: And who was your attorney?

9 THE DEFENDANT: Steve Morelli, and then it changed to
10 Mr. Tann because Morelli was arrested, and he was -- whatever.

11 THE COURT: So I take it you didn't fire Mr. Morelli,
12 he was forced to step down?

13 THE DEFENDANT: Yes.

14 THE COURT: And then you hired a Mr. Tann?

15 THE DEFENDANT: Well, Mr. Tann took over the firm.

16 THE COURT: I see. And you fired Mr. Tann?

17 THE DEFENDANT: Because of the ongoing between Betsy,
18 Randi, and my lawyer, which I had audio recordings.

19 THE COURT: I lost the word.

20 THE DEFENDANT: The dealings with Betsy, Randi, and my
21 lawyer.

22 THE COURT: You thought there was something corrupt
23 about those dealings?

24 THE DEFENDANT: Basically from what Betsy told me,
25 yes.

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1 THE COURT: Okay. So, for that reason, you fired
2 Mr. Tann?

3 THE DEFENDANT: Yes, because he lied to me. He said
4 that -- he said that the people at the Department of Ed had
5 immunity, and then I told him that's not up to him to decide,
6 that's up to the court to decide, whether employees have
7 qualified immunity. It wasn't up to him to decide not to put
8 it in, it was up to --

9 THE COURT: The judge?

10 THE DEFENDANT: -- the judge.

11 THE COURT: So what was the stage of the case -- where
12 was the case at when you fired Mr. Tann?

13 THE DEFENDANT: From the beginning, basically.

14 THE COURT: What happened afterwards? What were the
15 stages of the case after Mr. Tann left?

16 THE DEFENDANT: The city moved for, I believe what's
17 called, summary judgment. I believe that's what the motion
18 was. I'm not remembering. It's been quite some time.

19 THE COURT: And what happened next?

20 THE DEFENDANT: Judge Cogan said that the UFT had
21 nothing to do with this, and it had everything to do it.

22 THE COURT: Judge Cogan granted summary judgment to
23 the defense?

24 THE DEFENDANT: Yes.

25 THE COURT: And was any discovery taken in the case?

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1 THE DEFENDANT: Nope.

2 THE COURT: No depositions?

3 THE DEFENDANT: Nope.

4 THE COURT: No evidence?

5 THE DEFENDANT: Nope.

6 THE COURT: Did you, when you were representing
7 yourself, initiate any discovery, seek to take any discovery?

8 THE DEFENDANT: I didn't know anything about that at
9 that point. I was rushing through -- rushing to learn whatever
10 because of what was occurring. So I was behind the eightball.
11 Not that I know a lot now, but I know a little bit more than
12 what I knew then.

13 THE COURT: Look, you fired Mr. Tann, you were behind
14 the eightball, you didn't take discovery, and, therefore, no
15 discovery was taken, and Judge Cogan, based on that record,
16 entered summary judgment for the defense. Is that an accurate
17 summary?

18 THE DEFENDANT: Yes, that's accurate.

19 THE COURT: Do you believe that if you had taken
20 discovery, that might have put you in a better position to
21 either prevail or at least get beyond summary judgment?

22 THE DEFENDANT: If I were to present my evidence and
23 obtain evidence, probably, yes.

24 THE COURT: Suppose you had been more familiar with
25 the law and practice, if you had, after Mr. Tann stepped aside

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1 or was fired, taken discovery, do you think if you had done
2 that, your case might have survived longer?

3 THE DEFENDANT: So, what I think now, under the full
4 credit -- under the full fair credit amendment, or whatever,
5 from the highest court, because I mentioned them in my
6 complaint, I believe I could have filed a Rule 60, but --

7 THE COURT: Sorry, I'm asking you just a question.
8 You very honestly said to me you were not familiar with what
9 the --

10 THE DEFENDANT: Yes.

11 THE COURT: -- how to proceed, and sometime
12 thereafter, you lose the case. And the actual question,
13 particularly given the nature of this proceeding, is: If you
14 had been more up on the law, if you had been better at legal
15 practice, after Mr. Tann dropped away, do you think your case
16 would have survived a little longer?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay.

19 Apart from this case, have you ever been a defendant
20 in a criminal case?

21 THE DEFENDANT: Yes.

22 THE COURT: Tell me about that.

23 THE DEFENDANT: Two of them got dismissed and one of
24 them ended in a violation.

25 THE COURT: Can you elaborate, just take them one by

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1 one, and tell me what the case was about and what happened?

2 THE DEFENDANT: The first two were possession of
3 marijuana, supposedly, and I got an ACD to both, and the second
4 one, I was misadvised by my attorney who I hired, and that
5 ended in a violation.

6 THE COURT: When you said you were misadvised by your
7 attorney, can you elaborate what you mean by that?

8 THE DEFENDANT: Well, in order to convict for a DUI,
9 you have -- the prosecutor, the DA, has to prove that (a) you
10 took the substance or -- and then there's four elements -- I
11 don't remember the third and fourth -- and the second one is
12 that you drove. Obviously, the second one is always proveable,
13 but the first one is what needed to be established. I tested
14 negative, so...

15 THE COURT: Got it.

16 Was there any proceeding in any of the criminal cases
17 you had where you represented yourself at any point?

18 THE DEFENDANT: No, not in that one. Well, for a
19 couple of months, but not really.

20 THE COURT: Did any of those cases result in a trial?

21 THE DEFENDANT: No.

22 THE COURT: Did any of those cases come close to being
23 at a trial?

24 THE DEFENDANT: No.

25 THE COURT: Did any of those cases involve any

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1 evidentiary hearing?

2 THE DEFENDANT: Nope.

3 THE COURT: Did any of those cases involve the
4 questioning in court of any witness?

5 THE DEFENDANT: Nope.

6 THE COURT: Did any of those cases involve oral
7 argument by a lawyer in court?

8 THE DEFENDANT: There was one, and I wasn't privy to
9 it. They went into another room.

10 THE COURT: Have you ever attended a criminal trial?

11 THE DEFENDANT: No.

12 THE COURT: Have you ever served as a juror sitting as
13 a juror in a trial?

14 THE DEFENDANT: I was selected, but the case settled.

15 THE COURT: Okay.

16 Other than that jury duty occasion, have you ever
17 served as a juror?

18 THE DEFENDANT: No.

19 THE COURT: Have you ever seen jury selection
20 conducted?

21 THE DEFENDANT: Not personally, no.

22 THE COURT: Are you familiar with the Federal Rules of
23 Evidence?

24 THE DEFENDANT: Well, I have an annotated book.

25 THE COURT: I'm holding up the 2019 Federal Criminal

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1 Code, but there is a section in here that is the Federal Rules
2 of Evidence. Are you familiar with those?

3 THE DEFENDANT: I have a whole book that's probably
4 that size.

5 THE COURT: Okay. But having -- I've got a lot of
6 whole books that I'm not familiar with. Are you familiar with
7 the Federal Rules of Evidence, not only a book?

8 THE DEFENDANT: I've read certain passages. I haven't
9 read all of them.

10 THE COURT: What is your level of familiarity with the
11 rules?

12 THE DEFENDANT: From the ones I focused on, the 400
13 and the 800, they seem straightforward to me.

14 THE COURT: They seem straightforward to you?
15 What are the Rule 800 rules about?

16 THE DEFENDANT: Well, you just went over them.

17 THE COURT: I'm --

18 THE DEFENDANT: Sorry, sorry, sorry.

19 THE COURT: It's not about me. I know those rules; I
20 could represent myself.

21 THE DEFENDANT: Yes.

22 THE COURT: That's not what this is about. This is
23 about you. What are the Rule 800 rules about?

24 THE DEFENDANT: Admission of statements --

25 THE COURT: No, no, don't look it up. I'm asking you,

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1 because I'm trying to get a sense of whether you can represent
2 yourself at trial without a disaster happening.

3 What do the 800 rules relate to?

4 THE DEFENDANT: Admissions of statements, out-of-court
5 statements.

6 THE COURT: Out-of-court statements, all right.

7 Do you have -- that's a series of rules that comes up
8 a great deal during a trial.

9 THE DEFENDANT: Yes.

10 THE COURT: Is there anything further you can tell me
11 about what the rules say, those rules?

12 THE DEFENDANT: I don't have them set to memory. I
13 have it in here.

14 THE COURT: I'm not asking you from memory, but I am
15 trying to get a sense of whether you have any facility with
16 them at all. I appreciate that you've read something there,
17 but could you even give me 30 seconds of knowledge about the
18 Rule -- what you are calling the Rule 800 rules?

19 THE DEFENDANT: So, they deal with conspiracy,
20 statements of conspirators. They deal with opposing statements
21 from opposing parties, whether it's from the defendant or from
22 the government. What's the other two? I'm blanking out. I
23 can't tell you more than that.

24 THE COURT: What do the 400 rules relate to?

25 THE DEFENDANT: I don't remember that at all.

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1 THE COURT: All right.

2 What about the Federal Rules of Criminal Procedure, is
3 that something that you have any familiarity with?

4 THE DEFENDANT: Yes. Like -- so Rule 12 is, like, for
5 dismissal. That's what I see in my mind, but I just don't
6 remember them off -- I have them. I don't remember off the top
7 of my head.

8 THE COURT: Do you understand that your lawyer is
9 familiar with the Federal Rules of Evidence?

10 THE DEFENDANT: Oh, definitely.

11 THE COURT: Do you understand that your lawyer is
12 familiar with the Federal Rules of Criminal Procedure?

13 THE DEFENDANT: Oh, definitely.

14 THE COURT: Do you understand that we will follow
15 closely both sets of those rules at trial?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand that, ultimately,
18 the decisions that a judge makes are supposed to be guided by
19 those rules to make sure that there is an objective set of
20 standards and rules that governs a trial, and it's not by whim
21 or caprice? That's what I'm supposed to do, that's my job.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you understand, therefore, that
25 throughout a trial, I am either asking the lawyers for their

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1 views as to how certain rules apply, for example, certain
2 evidence or certain requests, or the lawyers, on their own
3 initiative, are bringing to my attention their perspectives as
4 to how certain rules apply?

5 Do you understand that?

6 THE DEFENDANT: Oh, that's what they did right now,
7 yes, all five of us.

8 THE COURT: But do you understand that in a
9 fast-moving trial, if a witness was over here in the witness
10 stand, and the government put a document in front of them and
11 asked a question to that witness, your lawyer might get up and
12 say, Judge, Rule 801, or Rule 403, or might make a short
13 argument as to why something the government is doing, Rule 609,
14 is inappropriate? Do you understand that that's very much the
15 work of the lawyer --

16 THE DEFENDANT: That's the practice.

17 THE COURT: -- in a trial, it's about applying a
18 fairly dense set of rules of evidence to a fast-moving set of
19 situations, and the lawyer is essentially quickly decoding what
20 has just happened and interpreting it in the light of the rules
21 of evidence?

22 Do you understand that that's the job of the trial
23 lawyer?

24 THE DEFENDANT: Yeah, that's the craft they have, and
25 they've honed it. They've worked a trial more than once, so

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1 they've honed their skills. That's their craft.

2 THE COURT: Indeed. Look, I will tell you before I
3 took the bench, that's what I used to do, and it's not
4 something that you learn doing one trial, it's many, and you
5 get more and more comfortable. There is a point like writing a
6 bicycle or learning a foreign language where you feel like
7 you've achieved fluency, but you always get better, but it's a
8 longer and arduous process informed by experience.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you have any experience that would
12 qualify you to do that?

13 THE DEFENDANT: Well, I do that as a teacher. I make
14 quick assessments, and quick judgments, and responses to what
15 happens in my room.

16 THE COURT: Sure. And I appreciate that. All of us
17 in our own lives have to think fast in our own ways.

18 THE DEFENDANT: Yeah.

19 THE COURT: But this is a unique vocabulary. And, for
20 example, if you simply got up and said I object, as a judge, I
21 would then need to say rule, what basis. Do you have anything
22 in your experience that would enable you to answer that next
23 question -- what basis, what rule?

24 THE DEFENDANT: That -- that would be my own account
25 because --

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1 THE COURT: That's a handicap.

2 THE DEFENDANT: Yes, I know it's a handicap.

3 THE COURT: It's not a handicap like a stroke for a
4 golfer. That's like being blind for a golfer. You need to be
5 able to see what's going on. If you don't know the rules, if
6 the government is offering something that's inadmissible under
7 the rules, unless I catch it on my own, you would not be of any
8 assistance to me if you were representing yourself.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that an attorney, by
12 study and experience, is far better able to follow and apply
13 those rules than you are?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Celli, if you were to represent
16 yourself, would you have some game plan between now and trial
17 to suddenly put yourself in the position where you could do
18 what it takes experienced lawyers years to do in terms of
19 having the skill set to ably defend against inadmissible
20 evidence, or improper arguments, or to admit evidence, or to
21 make proper arguments? How in the weeks between now and trial
22 would you learn those skills?

23 THE DEFENDANT: Read and reread all the books I have.

24 THE COURT: Do you understand that your criminal trial
25 will begin on May 17th of this year?

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1 THE DEFENDANT: Yes, but I have a request because --
2 but we'll deal with that after.

3 THE COURT: Do you understand that I have identified
4 the May 17th trial date as a firm trial date? This case
5 involves an event that allegedly happened on November 12th of
6 2018, which would be two and a half years and five days before
7 the trial date.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right.

11 Do you understand that the one count against you will
12 be tried then, and that a jury will decide whether you are
13 guilty of that crime?

14 THE DEFENDANT: Yes.

15 THE COURT: And do you understand that, just to be
16 concrete about what the crime is, Count One, the only count in
17 the indictment, charges you with transmitting interstate
18 threats to injure a person of another in violation of a statute
19 called Title 18, United States Code, Section 875(c)?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that that crime is a
22 felony?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you understand that the maximum
25 offense for that count in terms of imprisonment is five years

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1 in prison?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that apart from
4 imprisonment, if you're convicted of that crime, the offense
5 carries other potential penalties?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that, for example, the
8 Court can impose a fine of the greatest of \$250,000, twice the
9 gross pecuniary loss to another person, or twice the gross
10 pecuniary gain to you? Presumably that means \$250,000, given
11 the nature of the crime, but do you understand that apart from
12 losing your liberty for up to five years, you could lose a lot
13 of money?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand, as well, that the crime
16 carries a special assessment of \$1,000?

17 THE DEFENDANT: Yes.

18 MS. KARMIGIOS: \$100.

19 THE COURT: \$100, I'm sorry, my bad.

20 Sorry, thank you.

21 And do you understand, as well, that following any
22 term of imprisonment, the Court would have the authority to
23 impose a term of supervised release, which would mean that you
24 would be under court supervision potentially for a period of
25 several years?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if you were
3 convicted at a trial, one of the factors that a judge would
4 have to consider in deciding a just and reasonable sentence
5 would be what are called the sentencing guidelines?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you discussed the sentencing
8 guidelines with Mr. Silverman?

9 THE DEFENDANT: No, but I've read them and -- I've
10 read them. I printed it out while I was in jail.

11 THE COURT: Do you understand that if you were to
12 represent -- go ahead.

13 THE DEFENDANT: Oh, yes, yes. Sorry, yes.

14 THE COURT: Yes, what?

15 THE DEFENDANT: I did discuss them.

16 THE COURT: I was surprised to hear that you hadn't.

17 THE DEFENDANT: I'm sorry.

18 THE COURT: That's okay. All right.

19 Do you understand that if you were to represent
20 yourself, it's not my job, as the judge, to advise you how to
21 try your case?

22 THE DEFENDANT: Yes.

23 THE COURT: I'm trying to be solicitous of your
24 interests here, but, in the end, during a trial, I'm a neutral,
25 and I can't tell you, you know, it would be better if you

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1 cross-examined that witness on the following; I can't do that,
2 it's not my job.

3 THE DEFENDANT: No, it's not. It's your job to be
4 nonbiased.

5 THE COURT: Do you understand that the rule of
6 self-representation, where granted, is not a license to abuse
7 the dignity of the courtroom, it's not a license not to comply
8 with the relevant rules of procedure or substantive law, you
9 need to abide by all the rules?

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And if I tell you that a question is
13 improper or a statement is improper, you need to abide by the
14 Court's rulings or you are risking having your line of inquiry
15 shut down and risking potentially being held in contempt. Do
16 you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that the Court may
19 terminate a defendant's self-representation if the defendant
20 deliberately engages in serious and obstructive misconduct?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that the government has
23 the obligation at trial to prove you guilty through the use of
24 admissible evidence and beyond a reasonable doubt?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that you have no
2 obligation to prove that you are innocent?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that you have no
5 obligation to put on any evidence at trial?

6 THE DEFENDANT: Yep.

7 THE COURT: Do you understand, however, that you also
8 have the right to object to the government's evidence based on
9 the rules of evidence, and to cross-examine the government's
10 witnesses, compliant with the rules of evidence?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you ever questioned a witness in any
13 court or hearing of any sort?

14 THE DEFENDANT: Nope.

15 THE COURT: Have you ever testified in any proceeding?

16 THE DEFENDANT: No.

17 THE COURT: Do you understand that you would have the
18 right to call your own witnesses, offer evidence, and subpoena
19 witnesses to come to court and testify on your behalf?

20 THE DEFENDANT: Yeah.

21 THE COURT: Do you know how to do that?

22 THE DEFENDANT: No.

23 THE COURT: Do you understand that, at a trial, you
24 would have the right to take the stand, and under oath, testify
25 in your own defense?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand, however, that you also
3 have the right not to testify --

4 THE DEFENDANT: Yes.

5 THE COURT: -- and if you don't testify, I will
6 instruct the jury that they are not to hold that decision
7 against you in any way?

8 THE DEFENDANT: Yes. And the prosecutor can't make
9 any comments about it.

10 THE COURT: Right.

11 Do you understand that if you want to tell -- this is
12 very important -- if you want to tell the jury your version of
13 events in your own words, the only way you can do that is to
14 take the stand and testify in your own behalf under oath?

15 THE DEFENDANT: Yes.

16 THE COURT: In other words, if you were representing
17 yourself at trial, and you didn't expose yourself to
18 examination by the government, you couldn't, then, get up in
19 your jury address and say let me tell you what happened; you
20 can't do that, you can only comment on the evidence that's been
21 received at trial. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that by acting as your
24 own attorney at trial, the jury may draw inferences about you
25 as a person and about what you did in this case or know about

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1 the events of this case that they would not be able to draw if
2 an attorney represented you at trial?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Even if you don't take the stand at trial
7 and testify as a witness, you understand that the rights you
8 have as a criminal defendant, including the right to remain
9 silent under the Fifth Amendment, may be undermined because the
10 jury may draw impressions about you because of how you chose to
11 conduct your defense at trial?

12 THE DEFENDANT: I've read that, yes.

13 THE COURT: Do you understand that that is correct,
14 that a jury might draw negative inferences about a defendant
15 based on the way he or she conducted himself or herself?

16 THE DEFENDANT: Yes, of course. I -- the D.C. Circuit
17 Federal Defenders have a whole thing about pro se people and
18 the way juries respond to it.

19 THE COURT: You understand that that would be a risk
20 for a pro se defendant?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that proceeding pro se
23 may undermine your attempt to establish a defense?

24 THE DEFENDANT: Yes.

25 THE COURT: What types of evidence do you

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1 understand -- well, no, let me just ask the government.

2 Government, in category, what types of evidence will
3 you be offering, do you expect to offer at trial?

4 MS. KARMIGIOS: We'll be offering testimony from the
5 United States Marshals, documentary evidence in the form of
6 emails -- I'm sorry, your Honor, can you hear me -- testimony
7 from United States Marshals, as well as emails and other
8 documentary evidence, including the limited evidence about the
9 civil litigations that your Honor has ruled on.

10 THE COURT: I take it there would also be, from what
11 we covered earlier, the postarrest statement?

12 MS. KARMIGIOS: Yes, your Honor.

13 THE COURT: And postarrest prison calls?

14 MS. KARMIGIOS: Yes, your Honor.

15 THE COURT: All right.

16 Do you understand, Mr. Celli, that an attorney would
17 have experience and skill in objecting to aspects of that
18 evidence and cross-examining the witnesses, skills that you do
19 not have?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that an attorney is
22 skilled at cross-examining government witnesses, examining
23 their motives to testify, examining perhaps their prior bad
24 acts, exposing their prior inconsistent statements, offering --
25 drawing out things that they know that are helpful to your

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1 case?

2 Do you understand that a skilled attorney knows how to
3 do those things?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that attorneys know how
6 to ask these questions without drawing information out that
7 would hurt you, and that they're in a position to make
8 judgments about when it's better to stay mum and not ask a
9 question because the answer may hurt you?

10 Do you understand that that's part of an attorney's
11 skill set?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that if you did ask
14 questions of government witnesses, you run the risk that the
15 jury may assume that you know or did certain things because of
16 the type of questions you asked?

17 THE DEFENDANT: Yes.

18 THE COURT: In other words, an attorney can do certain
19 things without creating the same potential inference about what
20 you knew than might exist if you put the same question or a
21 question like it to a witness?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if you're convicted
24 at trial, you will have the right to appeal that conviction?

25 THE DEFENDANT: Yes.

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1 THE COURT: And do you understand that often,
2 convicted defendants complain on appeal that their attorneys
3 didn't represent them well enough at trial?

4 THE DEFENDANT: And I even read a case where someone
5 who was allowed to represent themselves pro se appealed to the
6 Second Circuit because they were -- that the attorney's
7 ineffective, like -- they went through this whole thing and
8 then they said they were ineffective, which I think that person
9 should have gotten over...

10 THE COURT: Look, let me be as blunt as I can.
11 Defendants often say that they deserve a new trial on appeal
12 because their attorney made an error at trial or failed to do
13 something during the trial that he or she should have done.

14 Do you understand that that's a very common point of
15 attack for a defendant who's been convicted on appeal?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand that if you
18 represented yourself at trial, that argument would be lost to
19 you? You would not be able to blame an attorney for a trial
20 error if you represented yourself, an attorney did not
21 represent you at trial. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you understand that if you
24 represent yourself at trial and are convicted, you will not be
25 able to complain on appeal that you should have had a lawyer?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if you represent
3 yourself at trial and are convicted, you will not be able to
4 argue that you made an error and that you should have done
5 things differently, the decisions you make at trial will be
6 your decisions, you'll own them, and you will be bound by your
7 decisions even if they put you in jail for a period of time?

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Has anyone threatened you or anyone else
11 in order to convince you to proceed to trial without a lawyer
12 to represent you?

13 THE DEFENDANT: No.

14 THE COURT: Has anyone promised you any benefit if you
15 proceed to trial without an attorney?

16 THE DEFENDANT: Nope.

17 THE COURT: I want you to know that if you gave up
18 your right to be represented by an attorney, and I permitted
19 that, in my judgment, you would be making an exceptionally
20 unwise decision.

21 THE DEFENDANT: I even had friends who told me that.

22 THE COURT: Well, be that as it may, I'm a neutral
23 here, but with a lot of experience in this system, and I'm
24 sitting here telling you and asking you to make sure -- I want
25 to make sure you understand that, in my judgment, for you to

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1 represent yourself here would be profoundly unwise.

2 THE DEFENDANT: And I'm -- my response -- what I was
3 trying to convey is that I spoke to even my friends, and they
4 even believe that's a dumb move. I just wanted to convey that.

5 THE COURT: Okay.

6 THE DEFENDANT: So it's not a decision --

7 THE COURT: I'm glad your friends agree with me, but
8 do you understand that it is my view, with the --

9 THE DEFENDANT: Yes.

10 THE COURT: -- experience that I have, the perspective
11 I have, and the knowledge I have about this case, that it is a
12 profoundly unwise decision for you in this case to represent
13 yourself?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay.

16 Do you understand that, in my view, you would be far
17 better off if you were represented by an experienced criminal
18 defense attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: And I'll put it very bluntly. This is a
21 triable case, and by a triable cases, it means that somebody
22 looking at it from the outside can imagine multiple outcomes
23 coming from this. This is a case that could be won or lost.
24 Do you understand that, in my judgment, if you choose to
25 represent yourself, you are materially increasing the chances

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1 that you will be convicted of a federal felony with all that
2 that involves?

3 That is my opinion. Do you understand that that is my
4 judgment?

5 THE DEFENDANT: Yes.

6 THE COURT: I want to elaborate a little bit on that,
7 because, in my view, Mr. Celli, there are particular features
8 of this case that make it unusually important for you to be
9 represented by an attorney and make it especially, in my view,
10 unwise for you to represent yourself, and I've taken some time
11 today to write these out to share them with you. And I'm doing
12 it because I'm concerned that you would be making a very bad
13 and a very self-destructive decision if you decide to represent
14 yourself, and I hope you'll listen to me because I'm going
15 beyond the usual script here and offering some thoughts about
16 this particular case because I want you to make an informed
17 decision. This may be the most important decision you make in
18 your life. Okay?

19 THE DEFENDANT: Uh-huh.

20 THE COURT: It may not feel that way now, but if
21 you're convicted, and you're sentenced to a material term of
22 federal custody, you may be sitting there thinking what was I
23 thinking, I should have listened to that guy. So I'm asking
24 you to listen to that guy right now. Here goes.

25 THE DEFENDANT: Yes.

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1 THE COURT: And I'm going to focus on just one by one
2 on three different aspects of the case, in particular, where,
3 in my judgment, the lawyer could really make a positive
4 difference for you relative to self-representation. This is by
5 no means a complete list. It captures only some of the areas
6 in which, in my judgment, a lawyer would help, and
7 self-representation could be fatally self-destructive.

8 First, in a case involving alleged threats, the
9 defendant's state of mind and intent, what's going on up here,
10 is an unusually important issue. You heard me earlier review
11 the elements of Section 875(c). A skilled trial lawyer can
12 help influence how a jury assesses the defendant's state of
13 mind and intent. A lawyer can do so through examination of
14 witnesses, including cross-examination of witnesses whom the
15 government has called. A lawyer can also do so by offering
16 exhibits into evidence that bear on the defendant's state of
17 mind and intent. A lawyer seeking to persuade the jury as to
18 his client's state of mind and intent can also make evidentiary
19 arguments why certain exhibits can be considered only for
20 certain limited purposes. Such a lawyer can ask the Court to
21 give the jury limiting instructions, which the lawyer will,
22 word for word, propose. A lawyer can also make arguments as to
23 why the evidence does not establish beyond a reasonable doubt
24 the required intent.

25 These are all challenging high-end aspects of a

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1 lawyer's work. They require training, experience, and
2 subtlety, and care, and a command, a deep command, of the rules
3 of evidence. They require an innate sense of what will fly
4 with a jury and what will not.

5 Do you understand that a person without legal training
6 and trial experience may do a far less job admitting evidence
7 with respect to intent and persuading the jury with respect to
8 the issue of intent?

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: That's category one.

12 Category two: There are two civil lawsuits in which
13 you participated may play an important role in this case. I
14 have asked counsel to negotiate in the hope of reaching
15 agreement as to the scope of the information about those
16 lawsuits that will be put before the jury within the boundaries
17 that I gave earlier. You heard my ruling earlier on that.

18 It may be that the parties agree, and it may be that I
19 need to resolve disputes about that. Regardless, I expect
20 there will be, as government counsel said, witness testimony
21 about those lawsuits. There is considerable, grave risk to you
22 about how those lawsuits are presented to the jury.

23 Questioning of witnesses may open the door to aspects of those
24 lawsuits that are profoundly unhelpful to you before the jury.
25 I have only limited exposure to the lawsuits, read only what

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1 I've learned in the papers in this case and a little bit about
2 what my law clerk was able to find today on the public docket,
3 so that I had some understanding of what the publicly filed
4 papers said, but just for one example, I understand there were
5 allegations in the lawsuit before Judge Brodie that you sent
6 disparaging communications over email. A jury hearing about
7 that might regard the emails you sent in this case in a
8 considerably more unfavorable light. A skilled lawyer will be
9 much more likely than a nonlawyer to carefully handle witness
10 questions and arguments before the Court in these areas, so as
11 not to open the door to potentially unhelpful facts.

12 Do you understand that a person such as you, without
13 legal training, may do a vastly less good job presenting
14 evidence about the prior lawsuit and making sure that you are
15 not needlessly harmed by the evidence that is received about
16 those lawsuits?

17 Do you understand that?

18 THE DEFENDANT: Yes, but I also understand that there
19 are certain facts that are hidden.

20 THE COURT: Be that as it may, the rules of evidence,
21 not your perception of what's being hidden, will govern what is
22 admissible. But if you were to, say, representing yourself,
23 make some accusation to a witness, you can open the door to a
24 dump truck of bad evidence from those trials coming in about
25 you that otherwise might not just because you felt that

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1 something was being hidden, and in that respect, your desire to
2 express yourself and say something about something being hidden
3 might feel good in the moment, but it will feel pretty terrible
4 when ten minutes of bad stuff comes rolling in because you
5 opened the door, and it will feel really, really bad if you
6 wind up in the MCC afterwards.

7 The point here is that this is exactly --

8 THE DEFENDANT: Oh --

9 THE COURT: One moment.

10 This is exactly why you want a lawyer managing the
11 process of witnesses, so as not to open up those doors.

12 THE DEFENDANT: So what happened with Judge Brodie is
13 that I filed too many -- wait --

14 THE COURT: No, no, no, no, no, no. This is exactly
15 why you shouldn't be representing yourself. This is not about
16 what happened before Judge Brodie, and we're not going to be
17 litigating whether she was right, the other side was right, you
18 were right. That's not going to be part of this trial. This
19 trial is going to be about whether or not the elements of
20 Section 875(c) are established or not beyond a reasonable doubt
21 based on the emails that you allegedly sent on November 12th,
22 2018. And it's precisely poking at the trials involving --
23 before Judge Brodie and Cogan that creates a risk that evidence
24 that I have held is not properly before the jury could come out
25 and in a light that would be profoundly unfavorable to you.

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1 My point is: Do you understand that a party
2 representing himself is creating a huge risk that negative,
3 harmful, prejudicial information from those lawsuits could come
4 out in a way that hurts you?

5 THE DEFENDANT: I guess.

6 THE COURT: You don't believe me, do you?

7 THE DEFENDANT: No, because my specific intent is to
8 get justice for what was deprived from me with those --

9 THE COURT: If you are going to get justice for those
10 lawsuits, you're going to have to go somewhere else because
11 you've been charged here as a criminal defendant, and the issue
12 is whether or not you committed the crimes.

13 THE DEFENDANT: Yes.

14 THE COURT: You will get justice in terms of getting a
15 procedurally fair and evidentiarily based verdict as to the
16 criminal charge against you, but whatever happened civilly is
17 not going to be litigated here, but your handling of the
18 evidence through questioning of witnesses about that could also
19 result in badly harming your chances of prevailing in this
20 case. That's all I want to make sure you understand.

21 THE DEFENDANT: Sure.

22 THE COURT: Is that a yes?

23 THE DEFENDANT: Huh?

24 THE COURT: Is that yes, you understand?

25 THE DEFENDANT: Yes.

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1 THE COURT: All right.

2 Third: The jury will likely be watching you,
3 Mr. Celli, during this trial. Juries tend to have an eye on
4 the defendant. The way you behave and carry yourself in the
5 presence of the jury may influence, even subliminally, the way
6 jurors view you, including whether they see you as a person
7 capable of making true threats. So, to the extent that you
8 might display a quick temper, to the extent that you might
9 display a degree of volatility, to the extent you might display
10 a degree of agitation, to the extent you might display an
11 inability to maintain control of your emotions, or words, or to
12 be on focus, all of that could play very much to your
13 disadvantage.

14 I will be very, very direct with you. Thinking back
15 even to the initial conference we had in this case, which was
16 by telephone, you displayed some of those characteristics. The
17 lawyer represents you at trial. You will not have any occasion
18 to say any words before the jury unless you choose to testify.
19 You will have the significant advantage of not giving anything
20 away. You can be a placid, stone-faced participant.

21 If, however, you represent yourself, you will be in
22 the position of being on stage and speaking frequently. You
23 will be questioning witnesses, presumably, you'll be making
24 objections, if you can formulate one consistent with the rules
25 of evidence to questions by the other side, you'll be making

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1 objections to evidence offered by the other side, you would
2 have the right to make jury addresses. If you failed to abide
3 by an evidentiary ruling of the Court, the Court may be
4 required to direct you, in increasingly firm language, to abide
5 by, to obey, the Court's ruling. If you do not do that in the
6 presence of the jury, they may draw a negative conclusion about
7 your desire to comply with the law because if you can't comply
8 with the rules in the courtroom, the premise might be, why
9 should we assume that he was complying with the law in the
10 offense that's been charged. It is possible, if you were
11 representing yourself, you would be triggered to say something
12 in anger or to make an intemperate accusation in the heat of
13 the moment in trial. So it is possible -- and I'm being very
14 direct with you -- that your temperament and the way you carry
15 yourself while carrying out those speaking functions could harm
16 you badly in the jury's eyes.

17 Do you understand that if your case is in the hands of
18 an attorney at trial, there will be far less opportunities for
19 moments like that to occur in which something you say or do
20 could lead the jury to draw an unhelpful negative inference
21 about you?

22 THE DEFENDANT: Yes.

23 THE COURT: All right.

24 Counsel, it is -- Mr. Celli, look, I'm trying to be
25 responsible, and share with you, and unpack for you the real

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1 risks I see here. Would you like to discuss this issue further
2 with Mr. Silverman?

3 THE DEFENDANT: What I would like to discuss is what
4 has occurred to me since day one in this courtroom, not your
5 courtroom.

6 THE COURT: You've never been in this courtroom. Day
7 one, that is today. You've never been here until two hours
8 ago.

9 THE DEFENDANT: No, no. What I mean is this whole
10 trial process.

11 THE COURT: Sorry, Mr. Celli, I'm focusing on the
12 issue at hand here. This is not going to be an opportunity to
13 have grievances about other things that happened earlier in the
14 prosecution, any more than the trial would be an opportunity
15 for you to have grievances about the counterparties, the
16 opposing parties, in the civil cases. That's not what this is
17 going to be about.

18 So, you need to answer my question. Do you want to
19 discuss this extremely important issue in your life further
20 with Mr. Silverman?

21 THE DEFENDANT: Yeah, okay. But, like, you're telling
22 me my intent. Like I know what I intended.

23 THE COURT: I don't know what you intended. The
24 evidence --

25 THE DEFENDANT: I intended -- the UFT denied me a

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1 grievance, and I shitted in my pants. Okay?

2 THE COURT: You what?

3 THE DEFENDANT: I shitted in my pants because the UFT
4 denied me a fair grievance. A principal put her hand in my
5 face. Randi threatened to expose my rape. Betsy, through
6 Randi, said that if I continued, that she would find a way to
7 be vindictive. My HIV status has been put on the internet more
8 than once.

9 THE COURT: Okay, Mr. Celli.

10 THE DEFENDANT: And -- wait, wait -- Betsy has
11 harassed me for five years, and it's the Court's fault is why
12 we're here, because it is a crime, and I wrote this in my
13 thing, and I sent it to the senators, everybody that's
14 involved, the common denominator is Senator Schumer and Randi
15 Weingarten.

16 THE COURT: Mr. Celli, what you have just said is
17 Exhibit A why you should not be representing yourself at trial,
18 because virtually nothing you've just said in the last 60 or 90
19 seconds would be admissible for any purpose in this trial or be
20 properly said before the jury. Were you to do that, you would
21 be immediately reprimanded for speaking about subjects that
22 have nothing to do with the case --

23 THE DEFENDANT: That's my intent.

24 THE COURT: -- that are not admissible, and if you
25 tried to question a witness about those areas, I expect,

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1 depending on the question, the objection would likely be
2 sustained, and, more to the point, if you tried to poke around
3 in those areas, because they really have nothing to do with
4 whether you made a threat or not, and with the requisite
5 intent, there is a real possibility that the door would open to
6 other information about those lawsuits.

7 Do you understand --

8 THE DEFENDANT: So February 5th, 2019, Ms. Betsy said
9 everything that was done prior in those lawsuits was okay, and
10 then I had other people from the DOJ said that what was done to
11 me is a crime, so -- and that goes back to the 800 section.

12 THE COURT: All right. Look, I appreciate that.

13 THE DEFENDANT: That's why I wrote --

14 THE COURT: I fully appreciate the sincerity of the
15 feelings you have about the people you've mentioned and those
16 past events in your life, but I also need to tell you that the
17 focus of this trial will be tightly focused on the conduct
18 alleged and the acts of your state of mind in connection with
19 it. I think it would be productive for you to spend a little
20 more time with Mr. Silverman, and I really have tried to bend
21 over backwards to explain why I'm worried that if you
22 represented yourself, you would be harming yourself potentially
23 in an unforgettable bad way. It could be the worst decision of
24 your life, and I'm really being very blunt with you.

25 This is what I would like to do. I'm going to confer

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1 with Mr. Smallman, but what I'd like to do is have you and
2 Mr. Silverman speak. And I will tell you that Mr. Silverman's
3 advocacy in this case has been absolutely first rate. He is a
4 counselor who has my esteem, and he has my respect for the
5 quality and rigor of his advocacy. He has exactly the skill
6 set that you need to formulate your position as best as
7 possible within the language of the courtroom. I would like --

8 THE DEFENDANT: I agree with that.

9 THE COURT: Good, I'm glad.

10 And, Mr. Silverman, you have my thanks for taking on
11 the representation, as I've said before.

12 MR. SILVERMAN: Thank you, your Honor.

13 THE COURT: But I'm going to speak with Mr. Smallman
14 about a time when we can meet. What I have in mind is an
15 ex parte conversation because I want to make sure that I
16 understand the nature of the relationship between you two, and
17 I want to -- Mr. Silverman, because -- Mr. Celli, because I
18 respect the fact that you appear to have misgivings about
19 advice Mr. Silverman has given you, and it may be worth my
20 exploring those with you because my assessment of those issues
21 may be informative here.

22 Mr. Smallman, let's identify a date.

23 (Pause)

24 THE COURT: Counsel, Mr. Smallman helpfully reminds me
25 that on April 16th, a week from Friday, we already have a

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1 conference at 2:00 p.m. May I suggest that I meet with
2 Mr. Celli and Mr. Silverman at 1:00 p.m.? That way, I'm not
3 assuming you've got the contiguous time frame.

4 Government, I'll ask you to be available, as well, at
5 2:00. I don't know how long the conversation with me and the
6 defense may take, so bring reading material, but, that way, at
7 least I'm not adding a conference to everybody's day.

8 And can I just ask -- this has worked very well --
9 Mr. Silverman, do I have your consent to do this conference
10 again in this courtroom?

11 MR. SILVERMAN: Yes, your Honor. And I would just
12 note I have a sentencing at 10:30 in the Eastern District that
13 morning, but I should be able to be here by 1:00 p.m.

14 THE COURT: Very good.

15 Mr. Smallman tells me, for independent reasons, it may
16 be easier for my chambers to do this on Thursday, the 15th, in
17 the afternoon, and that may also get rid of any potential pinch
18 with Mr. Silverman's schedule. Are counsel free that day?

19 MS. KARMIGIOS: Yes, your Honor.

20 MR. SILVERMAN: Yes, your Honor.

21 THE COURT: May I suggest, then, that -- Mr. Smallman,
22 can we say 2:00 p.m. on Thursday?

23 How about 2:00 p.m. on Thursday, April 15?

24 MR. SILVERMAN: Yes, your Honor. Is that for just --

25 THE COURT: That's just for you two. We'll keep the

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1 conference on for the following day.

2 MS. KARMIGIOS: Okay.

3 THE COURT: That way, I can take all the time I need
4 with Mr. Silverman and Mr. Celli, without feeling my time is
5 cramped. So we'll keep the conference on for Friday with all
6 concerned, but I will use Thursday for that purpose.

7 Mr. Silverman, I think even if you and Mr. Celli --
8 even if Mr. Celli reaches what I think is the wise judgment
9 here, which is to keep you on as his trial counsel, even if you
10 get to that point, I still want to meet with you, because I
11 think I may be of service here, and I think it's a useful
12 conversation, and I also want to create a clear record that I
13 have followed up with these questions just to make sure there
14 are no loose ends.

15 MR. SILVERMAN: Thank you, your Honor.

16 THE COURT: So, regardless of the state of play, while
17 I'm happy to receive a letter from you, if you find it useful,
18 alerting me to the state of play before we gather, I still want
19 to meet you Thursday of next week at 2:00 p.m. So, in effect,
20 we're adding a Thursday conference and keeping the Friday one
21 intact. The Friday is for everybody; the Thursday is just for
22 the Court and the defense. Given the nature of the conference,
23 it will be an ex parte conference. There will be a court
24 reporter, of course, but the transcript will be maintained
25 under seal.

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1 Mr. Silverman, I take it this is a sensible approach?

2 MR. SILVERMAN: Yes. And we appreciate your Honor's
3 time.

4 THE COURT: Okay. Government, you are -- again, you
5 are fine with that?

6 MS. KARMIGIOS: Yes, your Honor.

7 THE COURT: And I think I've secured this, but,
8 government, you consent to doing this here in this courtroom?

9 MS. KARMIGIOS: Yes, your Honor.

10 THE COURT: And defense?

11 MR. SILVERMAN: Yes, your Honor.

12 THE COURT: All right. I'm going to break in a
13 moment, but before we do, look, we are still very much on for
14 trial on the 17th, nothing about the schedule has changed.
15 We'll use the meeting on Friday, the 16th, to take stock of the
16 trial, which, at that point, will be a month and a day away.

17 Is there anything, though, at this point that I can be
18 helpful on in clarifying for counsel? Anything that I can be
19 of use on?

20 MR. SILVERMAN: Oh --

21 THE COURT: Sorry, counsel.

22 THE DEFENDANT: Sorry.

23 MR. SILVERMAN: Your Honor, may I confer with my
24 client?

25 THE COURT: Yes. I was about to ask the government

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1 first, though.

2 MS. KARMIGIOS: Not at this time, your Honor. Thank
3 you.

4 THE COURT: Okay. Go ahead, Mr. Silverman.

5 (Defendant and counsel conferred)

6 MR. SILVERMAN: Your Honor, Mr. Celli would like me to
7 bring to the Court's attention that he submitted a letter that
8 I saw early this afternoon to the Attorney General, Gerald
9 Garland, concerning allegations of judicial misconduct.

10 THE DEFENDANT: No, it's -- no, it's the conduct of
11 the AUSA and the fact that they need waivers -- well, I know
12 Ms. Benson didn't have a waiver, and she lied about her --

13 THE COURT: Sorry, I didn't hear. The conduct of who?

14 MR. SILVERMAN: Mr. Celli said the conduct of the
15 AUSAs, so he has --

16 THE DEFENDANT: That's why I wrote to the senate
17 judiciary, because they handle those complaints, and the U.S.
18 Marshals, and I sent it -- I have motions that I wanted to
19 bring up, and I sent them my intent, my subjective intent,
20 which I just told you.

21 THE COURT: It's news to me that you have filed those
22 submissions.

23 THE DEFENDANT: No, no, I didn't file them. He has
24 them. I gave them to the senate and ethics committee because
25 of what I believe is happening.

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1 THE COURT: All right. Look, Mr. Celli, you are at
2 liberty to make those submissions. If somebody wants to bring
3 a claim to my attention that bears on anything relevant to this
4 case, you're at liberty to do so, bounded by the Rules of
5 Professional Responsibility and truth-telling. And if
6 something crosses my plate, I will act appropriately on it.

7 At this point, I'm understanding, Mr. Silverman, that
8 nothing has been filed in this case?

9 MR. SILVERMAN: That's my understanding. I learned of
10 this just before today's conference, but I am not entirely --

11 THE COURT: Mr. Celli, you're not helping yourself
12 necessarily by raising extraneous matters.

13 THE DEFENDANT: No, no, I want to file a judicial
14 complaint against Ms. Scanlon -- excuse me, Magistrate Scanlon.

15 THE COURT: Magistrate who?

16 THE DEFENDANT: Magistrate Scanlon.

17 MR. SILVERMAN: If I may, I believe Mr. Celli has
18 respectfully requested a modification to his bail to allow him
19 to contact the Second Circuit, so that he can file a complaint
20 for judicial misconduct against Magistrate Judge Scanlon who
21 arraigned him in the Eastern District of New York.

22 THE COURT: I have no context with which to view that
23 application. I just don't know what has been -- I don't know
24 what his bail conditions are that are inconsistent with that.
25 I'm happy to receive a written application and get a proper

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1 response from the other side.

2 All right. With that, then, we stand adjourned. I
3 look forward to seeing the defense in a week. Thank you.

4 MR. SILVERMAN: Thank you, your Honor.

5 * * *